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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~1010.~~ ~~658~~ 391 116

NARCISSA SCRUGGS AND E. R. MATTHEWS AND JAMES MATTHEWS, SURETIES, APPELLANTS,

vs.

THE MEMPHIS AND CHARLESTON RAILROAD COMPANY AND JAMES H. VISER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

FILED OCTOBER 21, 1879.

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a United States district court, northern district of Mississippi.

Proceedings had in the district court of the United States for the northern district of Mississippi, begun and held for its June term, A. D. 1877, at the court-house in Oxford, Miss., on, to wit, the 9th day of July, 1877, and days subsequent thereto, in the following cause:

MEMPHIS & CHARLESTON RAILROAD COMPANY
vs.
NARCISSA SCRUGGS ET AL.

Humes & Preston of Memphis, Tenn., counsel for compl'ts.
Lamar, Mayes & Branhan of Oxford, Miss., counsel for def't.

Appeal to Supreme Court of the United States taken by Mrs. Narcissa Scruggs, one of the defendants in court below.

Cause commenced by transcript from the chancery court of Alcorn Co., Miss., as follows:

1 To the Hon. A. E. Reynolds, chancellor, presiding in chancery at Corinth, for the county of , and sole presiding chancellor of the chancery court of said county, &c.:

THE MEMPHIS AND CHARLESTON RAILROAD Company, complainant.
vs.
NARCISSA SCRUGGS, OF MADISON COUNTY, Ala., & R. W. Price, John M. Nelson, D. E. Coleman, A. R. Wiggs, of Tishomingo County, Miss., defendants.

Complainant would respectfully show unto your honor that it was created by charter granted by the general assembly of the State of Tennessee on the 2d day of February, 1846, and amended on the 4th day of February, 1848, for the purpose of constructing and operating a railroad through the State of Tennessee, Mississippi, Alabama, and so on to Charleston, South Carolina. Subsequently the legislature of the State of Mississippi, by act passed on the day of , 1851, granted the right of way to said company through Mississippi with the same privileges, immunities, and franchises as those granted by the Tennessee charter, subject to certain modifications and requirements not involved in and not necessary to be noticed for the purposes of this bill. The above mentioned charter and amendments, and the Mississippi act herewith filed marked
2 Exhibit A, and prayed to be taken as part of this bill. After the road was completed from Memphis, Tennessee, through Tennessee, Mississippi, and Alabama, to Stephenson, in Alabama, and after it had been some time in successful operation, carrying passengers and freight from Memphis to Stephenson, and from the latter place to the former one, John W. Scruggs, of Madison County, Alabama (now deceased), acting for himself, and Samuel Tate, president of complainant company, assuming to act for *and* respondent complainant entered into a written contract, signed by Tate, but not by Scruggs, and dated July the 7th, 1857, whereby it was agreed that the Memphis and Charleston Railroad Company would permit J. W. Scruggs to build a hotel on the grounds of the company at Corinth, Miss., to be used as an eating-house for said

road, upon the following terms: "The said J. W. Scruggs is to furnish the money to pay for said buildings and other improvements, and pay to said railroad company two hundred and fifty dollars per annum for the use of the ground occupied by said improvements and keep a first-rate eating-house, satisfactory to said company, and if said railroad company should become dissatisfied with the character of house kept, then they retain the right to pay said party the value of his improvements at the time and take possession of the property, and in case said party becomes dissatisfied with the schedule of the road or its management then he has the right to give up said improvements and require said company to pay him their value at the time of such surrender. In each case the property to be valued by disinterested parties, the agreement to be binding on both parties, as long as agreeable; said improvements to built according to the plans & specifications of the general superintendent of the M. & C. R. R. and to his satisfaction, to board all officers and employees of said company at the usual and customary rates charged by other eating-houses on said road." A copy of said agreement is hereto attached and made part of this bill.

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Complainant does not admit that Sam. Tate, as president, had the authority to execute this contract, but deny his authority, and that of the president and directors to authorize him as beyond the powers of the corporation. But Scruggs did under this agreement erect a hotel on the specified ground, and occupied it under said agreement, up to the 21st day of April, 1871. On or about that date, Scruggs, acting for himself, and M. J. Wicks, pres. of complainant company, assuming to act for com., agreed to a termination of the lease, under the contract, and on that they entered into a written agreement to submit to the arbitrament and award of Robert C. Brickle, Reuben O. Reynolds, and F. C. Pledge, the construction of said contract, lease, and the amount of the value of said property, to be paid on its surrender. A copy of this agreement is hereto attached, as Ex. C, and prayed to be taken as a part of this bill. About this time, or shortly before, J. W. Scruggs did, as complainant is informed, make some assignment or transfer to his wife, Narcissa Scruggs, of all his interest of said contract, of lease, and property, and she was made a party to the agreement of arbitration. Complainant does not admit that said transfer was legal, valid, and binding, nor do they admit she was legally made a party to agreement to arbitrate, but they deny the legality of both. Complainant further avers, from information and belief, that on the 21st day of April, 1871, said referees made their award in writing, whereby the' awarded that complainant should pay to Narcissa Scruggs, $31,666.66 for all the improvements on said leased premises, and on payment of said leased sum, said Narcissa should deliver to complainant possession of said hotel. And secondly, further, that the true construction of said original contract was that J. W. Scruggs acquired a perpetual lease on said ground on payment annually of $250.00 rent, subject to be terminated by either party on the condition set forth in said contract, and third, they awarded that, from the evidence in the case and the articles of submission and contract, the sum aforesaid to be paid is as the value of the property surrendered. Subsequently, Narcissa Scruggs filed her bill in this court, asking said award to be entered as the decree of this court, under the articles of submission to this bill. M. J. Wicks, president of complainant company, filed an answer, assuming to represent complainant company. On final hearing, the award was made the final decree of this court, on the 8th day of January, 1872. And on appeal, the supreme court of Mississippi, on

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the 14th day of December, 1874, affirmed the decree of this court. Complainant further shows your honor that amount due on the ground rent from Scruggs was not included in the submission or award, and by express agreement, now on file in said cause, was reserved for
5 hearing, and to be ascertained and allowed as a credit on the value of the property, as ascertained by the final decree. Complainant avers, on information and belief, that there was due from Scruggs on said ground rent, some $5,400.00 or thereabout, to which complainant is entitled under said contract as a credit of said decree, and no reference has been made yet to ascertain the same, as is provided in the agreement aforesaid.

Complainant further shows your honor, that the award fixed the date of surrender as the 21st day of April, 1871, and the final decree of this court, entered at the p'ayer of Narcissa Scruggs, also fixed the same day as the date of surrender, awarding interest to Narcissa Scruggs, on the $31,666.66, at the rate of 6 per cent. per annum, from the 21st of April, 1871; and the decree further gives her a lien for said recovery on said premises, and provides that the same was not paid in thirty days the property should be sold forthwith, and proceeds devoted to payment of recovery. The decree of the supreme court expressly affirms this decree, so that, as complainant is advised and insist', the award, the final, decree of this court and that of the supreme court, all fix*ing* the date of surrender on the 21st of April, 1871. Complainant, therefore, insists that under said award and decree complainant is entitled to the ground rent of $250 per annum up to the 21st day of April, 1871, and from that date to full reasonable rental value of property until the actual surrender of the possession. And they aver that Narcissa Scruggs has retained possession of said property up to the filing of this bill, and has not yet surrendered it to complainant. Complain-
6 ant is informed and charges that the property's yearly rental was worth during the year 1871 from $5,000 to $7,000, and for the year 1872 was actually leased out by Narcissa Scruggs at a yearly rent of $6,000, and for this year 1873 & '74 at something less each year. So complanant is entitled on the basis of said decree and award to credits on said judgment or decree not less than $25,000, and probably more, of the actual rents. Complainant would further show your honor, that Narcissa Scruggs is a non-resident of the State of Mississippi, and a resident of Huntsville, in the State of Alabama, and has, as complainant is informed and believes, no property in the State of Mississippi except said decree against complainant. Indeed, he is informed, believes, and charges that she has no other property anywhere, subject to condition claims. Complainant further shows your honor, that although the final decree in this court does not award an execution, but simply, after giving to this complainant thirty days to pay, awards an order of sale of said property, and notwithstanding the agreement that rents should be ascertained and credited, yet the said Narcissa has caused execution to be issued on the final decree of the court, seeking to collect the face of the decree of complainant and its securities in the appeal bonds, to wit, R. W. Price, John M. Nelson, Alex. R. Wiggs, and D. E. Coleman. Complainant is advised and insists that said execution is illegal, unauthorized; because, first, the final de-
7 cree of this court does not award execution, but orders the sale of the property in satisfaction of said decree. Secondly, the final decree of the supreme court awarded a mandate simply to this court to carry out said decree. Complainant is informed that notwithstanding the supreme court has sent a mandate to this court to enforce

said decree, yet the clerk and master of this court, not waiting for this court's actions in obedience to said mandate, has issued an execution to the sheriff of Tishomingo County against complainant and its said securities on the appeal bond to the full amount of said decree; and the same is now in the hands of the sheriff of Tishomingo County, and he will enforce the collection of the same, unless restrained by the order of this court; and complainant avers it will be to its irretreavle injury to permit Narcissa Scruggs to collect said decree, because a large portion has already been paid by the reception of the rents and the ground rents due from J. W. Scruggs, and because she is a non-resident, and without means other than said decree. Complainant is advised and insists that under the agreement of Nov., '71, now on file in this said cause, a reference was to be had to ascertain the credits complainant was entitled to on account of the ground rent, and also under the final decree fixing the date of surrender on the 21st of April, 1871, and giving her a lien and leaving her in possession until paid. Complainant is also entitled to a like reference to ascertain the full rental of said property from the 21st of April, 1871, to the end that it may also be credited on said decree; and that the execution could not be awarded until
8 these credits are ascertained, and allowed.

Complainant is further advised that if under the facts hereinbefore alleged complainant is not entitled to said rents as payment on said decree, yet under statement and rules of set-off complainant is entitled to have the amount so due as aforesaid for rent ascertained by this court, and allowed as a set-off against said decree in favor of Narcissa Scruggs and because of her being a non resident and without other means, this court will restrain the collection of said decree until the amount of set-off due as aforesaid is ascertained under the order of this court and allowed.

Complainant is further advised that if not entitled to said rents as a set-off, yet it is a debt due from Narcissa Scruggs to complainant, and her non-residence and want of property in the State entitles complainant to an attachment impounding said fund for satisfaction of complainant's rent claim aforesaid. Complainant is further informed and believes that Narcissa Scruggs has instituted an action of debt on saide award in the circuit court of this county, returnable to the February term, 1875, and has had the summons served on one of the complainant's agents at Corinth, and complainant is therefore entitled to stay said execution from this court and compel Narcissa Scruggs to elect in which tribunal she will enforce her rights. Complainant further insists that under this charter there existed no authority for the president of said company, nor for the board of directors, to make a contract for the building and running a hotel. Complainant company could not
9 purchase land for such purpose, nor could it use it' land property purchased for such purpose, nor could any president and directors enter into the contract with Scruggs, of July 7th, 1857, for the building of an hotel and purchase of it as therein provided, but the same was utterly void as a building contract of the complainant company. He is further advised and insists that said contract being ultra vires and void, the articles of submission where equally so, and the award and decree seeking and effecting simply a construction of the original contract, as to the true rule to ascertain the value of the improvements, and ascertaining that value, did not raise nor decide the validity of such contract, but the same remains wholly undecided by such award and decree thereon, and wholly unaffected thereby. Complainant therefore insists that it is not indebted to complainant Narcissa in any sum how-

ever small; but the original contract, the articles of submission, the award and decree thereon, are nullities, and he asks to have them so declared. Complainant asks leave to refer and does refer to the record of the case of John W. Scruggs and Narcissa Scruggs against complainant in this court, and especially the agreement of November, 1871, as to ascertainment of rents, and make it part of this bill. Complainant files this as an original bill; but should the court be of opinion that the former cause is not ended, and this should be a petition in that cause, he so files it.

Premises considered, complainant prays that Narcissa Scruggs, R. W. Price, John M. Nelson, Alex. R. Wiggs, and D. E. Coleman be made parties defendant to this bill (the last four being securities
10 of complainant on their appeal bond, and included in said execution), *be made parties defendant to this bill* by due and legal process and publication and under the rule of practice of this court, and required to answer according to the usual practice; and they p'ay that said Narcissa be enjoined from collecting this decree for $31,666.66, damages and interest, and the same declared invalid against complainant and said sureties; and they pray for stay and quashing of said execution; and, should their first prayer not be granted, they pray that the collection of said decree be stayed, and the amount of ground-rent due from and unpaid by John W. Scruggs and the full rent of the property, from the 21st of April, 1871, to actual surrender, be ascertained and decreed against said Narcissa, and deducted from said decree. They pray for an attachment of said funds in their hands, and an injunction against said Narcissa and her agents and attorneys from collecting or attempting to collect said decree off of this complainant or his sureties. He prays for general relief. This is the first application for an injunction or an attachment in this cause.

COOPER & HUMES,
Sols. for Compl't.

STATE OF MISSISSIPPI,
Alcorn County:

Personally appeared before me this day John H. Bradley, agent for the Memphis and Charleston Railroad Company, and made oath, in due
11 form of law, that the facts set forth in the foregoing bill as of his own knowledge are true, and those on information, advice, and belief he believes to be true.

JOHN H. BRADLEY.

Sworn to and subscribed before me this 8th day of January, 1875.
R. J. FLEMMING,
Chancery Clerk.

To the clerk and master of the chancery of Alcorn County, Miss.:

Let writs of attachment and injunction be granted as prayed, on complainant's giving bonds, with good and sufficient security, in double the amount of the judgment and decree, conditioned as the law directs, which securities shall be approved by you.

Given under my hand and seal this 8th day of January, 1875.
A. E. REYNOLDS, [SEAL.]
Chancellor.

THE STATE OF MISSISSIPPI,
Alcorn County:

The clerk of the chancery court of said county will issue writs as prayed for in this bill, on the complainant's entering into bond in the

sum of sixty-five thousand dollars, with two or more sufficient securities to be approved by you, and conditioned according to law.

Given under my hand and seal the 8th day of January, 1875.

J. D. BARTON, [SEAL.]
Chancellor of 8th Chancery Dist.

Bond.

STATE OF MISSISSIPPI:

12 Know all men by these presents that we, the Memphis and Charleston Railroad Company, principal, and R. T. Wilson, F. H. Cassitt, J. C. Neely, Napoleon Hill, John M. Nelson, R. C. Brinkley, R. W. Price, Daniel Coleman and George P. Hamerly, sureties, are held and firmly bound unto Narcissa Scruggs, in the sum of sixty-five thousand dollars, to be paid the said Narcissa Scruggs, her heirs, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators firmly by these presents, sealed with our seals, and dated the 18th day of January, A. D. 1875.

The conditions of the above obligation is such, that whereas the above bound Memphis and Charleston Railroad Company has this day obtained from the honorable chancellor of this court a writ of injunction and supersedeas, enjoining and restraining the defendant, &c., until the same can be heard and determined at the honorable chancery court of Alcorn County, State of Mississippi.

Now, if the said Memphis and Charleston in case the injunction shall be dissolved, shall within 30 days thereafter well and truly pay and satisfy all such cost and damages as shall result from the wrongful sueing-out of this injunction, and abide by and perform the decree of said chancery court, then this obligation shall be void, otherwise the same shall remain in full force and virtue.

MEMPHIS & CHARLESTON R. R. CO. [SEAL.]
By M. J. C. HUMES, *Sol. and Att'y.*
R. T. WILSON. [SEAL.]

13 By his attorney in fact,
W. Y. C. HUMES.
T. H. CASSITT. [SEAL.]

By his attorney in fact,
W. Y. C. HUMES.
J. C. NEELY.

By his attorney in fact,
W. Y. C. HUMES.
NAPOLEON HILL. [SEAL.]

By his att'y in fact,
W. Y. C. HUMES.
JOHN M. NELSON. [SEAL.]
R. C. BRINKLEY. [SEAL.]
R. W. PRICE. [SEAL.]
D. E. COLEMAN. [SEAL.]
GEO. P. HAMERLY. [SEAL.]

STATE OF MISSISSIPPI,
Alcorn County:

I do solemnly swear (or affirm) that I am seized and poss'ed in my own right, in visible property, the sum of ten thousand dollars over and

above all my legal liabilities, and not including property exempt by law from sale or debt.

G. P. HAMERLY.

Sworn to and subscribed to before me this 18th day of January, 1875.

R. J. FLEMING, *Clerk.*

STATE OF MISSISSIPPI,
Alcorn County:

I do solemnly swear (or affirm) that I am seized and possessed in my own right, in visible property, the sum of twenty-five thousand dollars, over and above my legal liabilities, and not including property exempt by law from sale or debt.

R. W. PRICE.

Sworn and subscribed to before me this 18th day of January, 1875.

R. J. FLEMING, *Clerk.*

14 STATE OF MISSISSIPPI,
Alcorn County:

I do solemnly swear (or affirm) that I am seized and poss'ed in my right, in visible property, the sum of fifteen thousand dollars, over and above all my legal liabilities, and not including property exempt by law from sale or debt.

D. E. COLEMAN.

Sworn to and subscribed before me this 18th day of January, A. D. 1875.

R. J. FLEMMING,
Chancery Clerk.

STATE OF MISSISSIPPI,
Alcorn County:

I do solemnly swear (or affirm) that I am seized and possessed in my own right, in visible property, the sum of ten thousand dollars, over and above all my legal liabilities, and not including property exempt by law from sale or debt.

JOHN M. NELSON.

Sworn to and subscribed to before me this 18th day of January, A. D. 1875.

R. J. FLEMMING,
Chancery Clerk.

STATE OF MISSISSIPPI,
Alcorn County:

I do solemnly swear (or affirm) that I am seized and possessed in my own right, in visible property, the sum of twenty-five thousand dollars, over and above my legal liabilities, and not including property exempt by law from sale or debt.

R. C. BRINKLEY.

Sworn to and subscribed before me this 18th day of January, A. D. 1875.

R. J. FLEMING,
Chancery Clerk.

15 *R. T. Wilson et al. to Wm. Y. C. Humes, pr. att'y.—Filed Jan 18th, 1875.—R. J. Flemming, clerk.*

Know all men by these presents, that we, R. T. Wilson and F. H. Cossett, of New York City, and Napoleon Hill and J. C. Neely, of Memphis, Tennessee, do severally and jointly appoint William Y. C. Humes the attorney in fact for all and each of us, to sign our names as sureties of the Memphis and Charleston Railroad Company, to any injunction and attachment bonds or bond, to the amount and in the penalty of seventy thousand dollars, that has been or may be required by the chancery court of Alcorn County, in the State of Mississippi, in any suit or petition instituted or about to be instituted or commenced by the Memphis and Charleston Railroad Company in said court, against Narcissa Scuggs et al., to restrain the collection of a decree obtained in said court, and in the supreme court affirmed by said Narcissa Scuggs against said railroad company and sureties, and for the sum of $31,666.66, and interest from 21st of April, 1871, and five per cent. damages allowed in said supreme court.

We do hereby acknowledge ourselves bound by said Humes' acts in the premises equally as if we and each of us were present, signing and executing and delivering said bonds or bond in our own proper persons, each of us; and we do further empower him so to execute said bonds or bond in our names in such manner as shall make a valid and binding obligation on us, and each of us, hereby ratifying, authorizing and confirming all his acts in the premises.

In testimony whereof we, and each of us, have hereunto set our
16 hands and seals this day first above written, to wit, this 14th day of January, 1875.

R. T. WILSON.
NAPOLEON HILL.
J. C. NEELY.
F. H. COSSETT.

STATE OF TENNESSEE,
City of Memphis:

OFFICE No. 33 SOUTH COURT STREET,
Commissioner's Office.

I, Hemsdon Cary, commissioner of the State of Mississippi, duly appointed by the governor thereof for the State of Tennessee, to reside in the city of Memphis and take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing, under seal or not, administer oaths, and take and certify depositions, &c., to be used or recorded in said State of Mississippi, do certify that on this day personally appeared before me R. T. Wilson, F. H. Cossett, Napoleon Hill, and J. C. Neely, to me known to be the individuals named in and who executed the annexed bond, and acknowledged that they signed, sealed, and delivered the said bond as their voluntary act and deed, for the use and purpose therein mentioned.

Given under my hand and office seal this 14th day of January, 1875.

HEMSDON CARY,
Commissioner for Mississippi, at Memphis, Tennessee.

STATE OF MISSISSIPPI,
Alcorn County:

I, R. J. Fleming, clerk of the chancery court of said county,

17 certify that the foregoing power of attorney was filed for record the 18th day of January, A. D. 1875, and is truly recorded in Deed Record No. 5, on page 10 & 11.

Given under my hand seal of office this 18th day of January, 1875.

R. J. FLEMING, *Clerk.*

Writ of injunction.

THE STATE OF MISSISSIPPI,
Chancery Court of Alcorn County, to wit:

To Narcissa Scruggs, R. W. Price, John M. Nelson, D. E. Coleman, and A. R. Wiggs, and their agents and attorneys, greeting:

Whereas it has been represented to us in our chancery court, on the part of the Memphis and Charleston Railroad Company, complainant, that he has lately exhibited its bill against you, Narcissa Scruggs, R. W. Price, John M. Nelson, D. E. Coleman, & A. R. Wiggs, agents, &c., defendants, to be relieved touching the matter in said bill contained, we therefore, in consideration of the premises and of the allegations in said bill contained, strictly enjoin and command you to desist from collecting a judgment against said railroad company in favor of said Narcissa Scruggs on the penalty of dollars, to be levied of your goods and chattels, lands and tenements, to our use; that you absolutely refrain from attaching the property, and from any further proceedings against said complainant touching any of the matters in said bill contained, until our said court shall make another order to the contrary.

18 Issued the 18th day of January, A. D. 1875.

To the sheriff of Tishomingo County, to execute and return.

R. J. FLEMING, *Clerk.*

Executed personally upon R. W. Price, D. E. Coleman, J. M. Nelson; the remainder not found in my county.

January 25th, 1875.

J. J. ALEXANDER, *Sh'r'ff.*

Answer of Mrs. Scruggs.—Filed May 10th, 1875.—R. J. Fleming, clerk.

MEMPHIS AND CHARLESTON R. R. CO.
v.
NARCISSA SCRUGGS ET AL.

In the chancery court of Alcorn county, Mississippi.

The separate answer of Narcissa Scruggs to the bill of complaint filed against her and others in this cause, or so much thereof as she is advised is material and necessary to be answered, and reserving the benefit of all lawful exceptions to the many errors and imperfections therein contained, respectfully states unto your honor:

Respondent admits the charter of complainants by the legislatures of the several States; but upon information she denies that said railroad had been completed and in operation for some years at the time of the contract between complainant and John W. Scruggs, on the 7th day of July, 1857.

Respondent admits that complainant and John W. Scruggs entered into a contract, as copied in the bill of complaint and the exhibits there-

to. But she expressly denies that said Samuel Tate and the
19 president and board of directors had no power to make such a contract, or that the same was beyond the power of said corporation.

Further answering, respondent says that it is admitted in said bill that on the 2d day of May, 1871, she filed her bill in the chancery court of Alcorn County, on which a final decree was rendered, which was afterwards affirmed by the supreme court of this State, and the record of said suit is made a part of this bill in this cause. And it appears distinctly that the said complainant appeared and filed its answer and distinctly admitted the execution of said contract with John W. Scruggs, and the validity of the same, and claimed full benefit thereof; and being then in court made no objection to the authority of Samuel Tate, president, or of the president and board of directors to authorize him to make such contract, but on the contrary such power was distinctly admitted and affirmed; and therefore said complainant is forever barred & estop'ed from alleging or setting up any such matter in this bill.

Respondent admits that on the 24th day of February, 1871, another agreement was made between complainant and this respondent, the said J. W. Scruggs, joining her in the contract as her husband, which recited the original contract, and the fact that John W. Scruggs had conveyed all his interest in the property to respondent. She further admits that it was submitted to the arbitrament and award of Robert C. Brickle, Reuben O. Reynolds, and F. L. Pledge to decide the construction of said agreement, and the value of said property to be paid on its surrender; which will fully appear by refer'nce to said chancery suit
20 of respondent against said complainant to enforce said award.

Respondent expressly denies the allegation in said bill "that the transfer and conveyance of his, John W. Scrugg's, interest in said property to respondent was not legal, valid, or binding, and that respondent was not legally a party to the agreement to arbitrate." On the contrary, respondent avers that both were valid, legal, and binding.

Further answering, respondent says that it appears from the record of said suit in the case of respondent against said complainant, No. 97, in the chancery court of Alcorn County, that this complainant, by his answer in that suit, distinctly admitted the validity of said conveyance from her said husband to respondent, and did not deny her right or title, but in said answer denied the validity of said articles of submission because she was a married woman, and the said question was litigated in said suit, and was finally decreed in favor of respondent, and she therefore submits that said complainants are forever estopped and precluded from setting up said matter in this suit.

Respondent admits that on the 21st day of April, 1871, said referees made their answer in writing, by which, among other things, they decreed that complainant should pay respondent $31,666.66, and on the payment of said sum she should surrender the possession of the property; that she should retain a lien on it until the said sum should be paid according to the terms of the submission, and that on such payment and surrender respondent should execute and deliver to complainant a quit-
21 claim deed conveying to said complainant all her interest in said property; and respondent avers that it distinctly appears from the record of said suit of Narcissa Scruggs *vs.* Memphis and Charleston Railroad Company to enforce said award (which is made a part of the bill of complaint in this cause) that on the day said award was made respondent offered to deliver up possession of said property and execute a quitclaim deed to all the property, and to do all else she was

bound to do, and demanded payment of the amount due her, under the award, from the said Memphis and Charleston Railroad Company, who then and there refused to receive the surrender of said property or to pay her anything, but utterly repudiated their solemn agreement and the award made in pursuance thereof; and respondent avers that these facts, so appearing in the record, are true.

Further answering, respondent admits that she filed her bill of complaint, as before stated, in the chancery court of Alcorn County, on the 2d day of May, 1871, to enforce the specific performance of said award, and to recover the sum of money justly due her, as before stated; that in said bill, which was filed within twelve days after said award was rendered, she again offered to surrender the said property, and filed, with said original papers, as appears from the record, a quitclaim deed to said property, and offered to do all things required of her by the said articles of submission and the award thereon; respondent, in her said bill, prayed for simple justice and the payment of her money. She was then, and has been ever since, willing and anxious to surrender said property on the payment of the money due her. She had been left a widow with a large family, and she had no use for the said property, but sorely needed and wanted her money.

22 Respondent further states that complainant answered her said bill as appears from said record, and denied and attempted to to repudiate the agreement of the submission by seeking to repudiate the authority of their president, Moses J. Wicks, and to avoid said agreement, because this respondent was a married woman at that time, and to impeach the judgment and power of the arbitration.

The said Memphis and Charleston Railroad Company retained and employed a number of able counsel, and opposed in every possible manner the rendition of a decree in her favor, which was not done until the 8th day of January, 1872, and immediately afterward said railroad company took an appeal to the Supreme Court, and an affirmance of said chancery court decree was not obtained until the 14th day of December, 1874, nearly five years after the award when she was justly entitled to her money.

Respondent states that in all this litigation she has been necessarily put to an enormous expense, and has incurred liabilities to her counsel and agents for large sums of money, and has been subject to all the vexation of a most harassing litigation, and she insists that complainant is not entitled to receive the rents for said property, from the date of the award, when said corporation might have taken possession, and refused to do so, and respondent insists that said corporation cannot now take advantage of its own wrong.

Further answering, respondent expressly denies that the award, the decree *the decree* of the chancellor, and the judgment of the Supreme Court, all fix the date of the surrender of the said property on the 21st day of April, 1871, and that complainant is entitled to the ground rent of $250 per annum up to that time, and from that day is

23 entitled to the full reasonable rental value of the property until the actual surrender or possession, as is *untimely* alleged in the said bill. On the contrary, the award, the decree of the chancellor, and the judgment of the Supreme Court, fix the 21st day of April, 1871, as the day on which the money should have been paid, to wit, said sum of $31,666.66; but the property was only to be surrendered on the day the money was paid; that was the day fixed for the surrender and no other. If complainant had paid the money on the 21st day of April, 1871, or at any time since, or should pay now, respondent is and was

ready to surrender the possession of the property. Respondent denies that said complainant can under said decree repudiate the award, as it now does, and refuse to pay the money, and at the same time claim possession of the property, or its equivalent in rents and profits, from the date of the award, as is untruly alleged in said bill. On the contrary, the said award and the decrees thereon give interest on the sum awarded, as the statute expressly provides, from the date of the award, and expressly provides that complainant shall not have possession nor the rents and profits until the amount of the award and interest is paid.

Respondent, further answering, says it was expressly adjudicated by said decrees and judgment that this respondent held a perpetual lease on said property, on conditions which were admitted to have been performed. That said railroad company should pay her the sum of $31,666.66, with interest at 6 per cent. per annum from the 21st day of April, 1871, and that until the payment of the money she should
24 retain the possession of the property, and upon the payment of the money, and not before, she should deliver to said corporation a quitclaim deed, conveying and surrendering all her right, title, claim, and interest, which remained vested in her until that time. All of which will more fully and at large appear by reference to the final record in said cause remaining in this the chancery court of Alcorn County, which is here referred to as a part of this answer. Said final decree was in all things affirmed by the judgment of the Supreme Court, a copy of which is herewith filed, marked Exhibit No. 1, as part of this answer.

Respondent expressly denies that the yearly rental of said property during the year 1871, was from $5,000 to $7,000. Respondent denies that the said property was leased for the year 1872 for $6,000. Respondent made a contract for that amount with one Chapman, who directly after became bankrupt and paid only the sum of $500. For the years 1873 & 1874 said property was rented for $6,349 $\frac{25}{100}$, of which only the sum of $4,349 $\frac{25}{100}$ was collected. Said complainant and its agents refused to use said hotel as an eating-house for its passengers, and as respondent is informed and believes, used their influence with the Mobile and Ohio Railroad Company to induce it to do the same, and the said property became greatly out of repair, and the rental has thus greatly diminished in value, owing mainly to the bad faith of complainant and the violation of its solemn obligation. Respondent could neither use said property or rent it at its value, or keep it in repair, because she was liable to surrender it whenever the money was paid her by complainant, and she could only rent it on this condition. Being a widow and re-
25 siding in another State, she was very unwilling to retain said property, which was a source of constant annoyance and vexation, while she was sorely in need of funds to support, maintain, and educate her large family, and needed therefore the amount of said decree, which was so unjustly withheld from her by complainant. Respondent expressly denies that said final decree and judgment are entitled to a credit of the sum of $25,000 or any other sum, as is untruly alleged in said bill.

Further answering, respondent says that the ground rent of $250 per annum, as specified in the original lease, was not submitted to said arbitrators, and has no connection with said award, and she denies that any claim for the same is a credit (even if anything were due, which she denies) on said final judgment and decree. She states that after the time said award was made it was contended by complainant that there

was a small balance of about $725\frac{83}{100}$ hundred dollars due for ground rent, which was denied by respondent and her husband and agent, who claimed that a considerable sum was due from complainant to this respondent for board of the hands and employees of said railroad company, and that said company was also indebted to respondent largely for damages for breach of the original contract, and it was agreed that it should be referred to a master of the chancery court to state the account and adjust the same, and if anything was found due, respondent promised to credit it on the award of the arbitration. The master in chancery was thus made an umpire or arbitrator to settle the separate account, as appears from the written agreement filed with said company's orginal answer on the 23rd of November, 1872. Respondent states
26 that at the time of said award, and when said last-named agreement was signed, she had no idea that there would be a long and protracted litigation of years by the said complainant. She denies that there is anything due complainant on account of said ground rent.

Further answering, respondent says that after said award was made, and after the said agreement in reference to the ground rent was made, said complainant refused to abide and perform its said agreement of submission to Brickle others, and attempted to repudiate said award, and when respondent filed her bill, as before stated, on the 2nd day of May, 1871, said complainant filed its answer thereto on the 16th May, 1871, in this chancery court of Alcorn County, in which answer complainant avers "That the said Scruggs is indebted to the said Memphis and Charleston Railroad Company in the sum of dollars for the rent of said property, under said contract of lease as set forth in said bill, a statement of which is attached to this answer, marked Exhibit A. Said complainant further alleged "that said rent was not a matter of difference between it and the said Scruggs, that no proof was introduced upon the same before said arbitration, but it was agreed after the making of said award that the same should be settled between the parties." Said complainant then further alleged "That the said amount of rent and interest is a just and proper deduction from any amount that may be determined to be due by said corporation under the award made in reference to said contract, and asked that it may be allowed."

Respondent further alleges, by way of further answer to this bill of complaint in this cause, that it appears from the record of said cause
27 that no evidence was taken to support the said claim, and the allegations in reference thereto were at issue in said cause, and that on final hearing the chancellor decreed that the whole amount of the award should be paid, and disallowed the claim for ground rent as a credit. Complainant well knows, as respondent is informed and believes, that nothing was due to it on said ground rent, and no testimony could be procured to sustain it against the just claim of respondent for feeding the employees of said road and other items.

Respondent states that since said cause was at issue her husband, John W. Scruggs, has died, and now after the decision of the chancellor disallowing said claim, and the affirmance by the Supreme Court, and years after the death of her said husband, the complainant here seeks to set up said claim and litigate again. Respondent insists that complainant is by the said final decree of the chancellor, and the final decree of the Supreme Court affirming the same, forever barred and estopped from sueing on the same claim again, or from setting up the same as a set-off or payment on said final decree. Respondent further states that said claim for $250 per annum ground rent was due at the

end of each year up to the 21st day of April, 1871, according to the statement of complainant in his bill, and that said claim is a mere money demand, and is barred by the statute of limitation. Said claim being a mere money demand, the complainant has an adequate and complete remedy at law, and this court has no jurisdiction of the same.

28 Further answering, respondent admits she is a non-resident of Mississippi, and resides in Huntsville, Ala., and that she owns no other property in Mississippi, as stated in the bill, except the amount due her from complainant, and her right to hold possession of said property until said decree is paid, but respondent denies that she has no property anywhere else liable to her creditors. Respondent admits that she has retained possession of said property, according to the decree, as she was compelled to and had a right to do, because complainant refused her, after repeated offers, to surrender, and has a right to hold possession until the money due her is paid. Respondent denies that there was due from her to complainant the sum of $5,400 or any other sum on said ground rent, nor is said decree entitled to any credit therefor. No reference was ever made to ascertain the balance due the one way or the other in reference to said ground rent, and the sums due to respondent for board of employees, &c., because said complainant attempted to repudiate the award, and have it declared null and void, and failed and refused to have said reference made, but set up the same as a defense to respondent's said bill of complaint, as before stated. Respondent further states that the rents received by her for said property or the annual value of the rental was not claimed as a set-off by said complainant to the said bill filed by this respondent on the 2d day of May, 1871, nor was any claim or title set up to the same, and that by said final decree complainant is barred and estopped from claiming the same in this suit.

29 Further answering, respondent states that if complainant is entitled to anything on account of said last-mentioned rents, the same is a money demand for money had and received, and its remedy is full, adequate, and complete at law, and this court has no jurisdiction thereof.

Respondent further answers that the claim for said rents set up in said bill is barred by the statute of limitation. Respondent expressly denies that said decree, rendered by Chancellor Whitfield, on January 8th, 1872, in favor of respondent, and against complainant herein, on said award, for the sum of $31,666.66 did not award an execution; on the contrary, it decrees the payment of the money by complainant to defendant, and the statute provides that on such a decree execution may issue as at law. And the fact that this respondent's lien on the property was enforced did not deprive respondent to her right to an execution. It was distinctly provided, in the agreement of submission, that the award should be intended as the decree of this court, which was done as provided by statute. Respondent admits that she caused execution to issue on the final judgment of the Supreme Court against the principal and sureties in the appeal bond as the law requires. Respondent denies that the judgment of the Supreme Court only awarded a mandate to this court; on the contrary, the judgment of the Supreme Court not only affirmed the decree of the chancellor, "but it was considered, ordered, adjudged, and decreed that the appellee do have and recover of the appellant and sureties in the appeal bond, George P. Hamerly, R. W. Price, John M. Nelson, A. R. Wiggs, & D. E. Coleman, the sum of $31,666.66, the amount of the decree of the court below, together with the sum of

fifteen hundred and eighty-three dollars and 33 cents ($1,583.33),
30 being damages as allowed by law, with interest at the rate of 6%
per annum on the original decree from the dates of its mediation,"
all of which appear from said exhibit. Respondent admits that on this judgment of the Supreme Court the clerk of this court issued the execution, as the law requires, against principal and sureties. Respondent denies that any legal injury will result to complainant from the enforcement of said execution and the collection of the money, however inconvenient it may be to pay an honest debt. She again denies that the larger portion or any portion of said decree was or is paid by the receiption of rents, or of ground rents due on said property. She denies that she is without means, though she is a non-resident of the State. She again denies that complainant is entitled, under any agreement, to an account for the said ground rent. And she again denies that complainant is entitled to a like reference to ascertain the full rental of said property from 21st of April, 1871. Respondent denies that under the statutes and rules of set-off complainant is entitled to have the amount claimed as due for rents ascertained by this court, and set off against this decree.

Respondent again insists that if anything is due to complainant as stated in said bill, on account of said rents (which she again positively denies), it is a debt on simple contract, and the remedy is adequate, ample, and complete at law, and she expressly denies that her non-residence, or any other cause, confers any justification on this court to stay the collection of this execution, or to credit the same as claimed.

Respondent admits that she instituted a suit at law on the award of
said arbitration some time after said complainant sought, by its
31 answer in the chancery suit, to set aside said award, and denies
said suit on the ground, among others, that the remedy was at law and not in equity.

Respondent had a right to resort to both courts to recover the amount of the award and interest, and the other to recover at law damages generally for failure to perform, and if it had turned out that complainant had sworn to the truth in said answer, then the court of law alone would have given relief. But as it was not the truth, and the Supreme Court has so decided, and no appearance having been entered for the defendant in the court of law, the said suit has been dismissed.

Respondent further states that the pendancy of said suit at law affords no ground for the equitable interferance of this court, because she says that if complainant will pay and satisfy the decree in chancery he can plead the same on the decree itself in barr of the action at law. And his remedy is thereof complete at law.

Respondent denies that under the charter of complainant there exists no authority for the president or board of directors to make the contract of July 7th, 1857, with said J. W. Scruggs for building and running said hotel. And respondent denies that complainant could not have purchased land, or use land or property purchased, for the purpose set forth in said contract of July 7th, 1857.

Respondent denies that the said contract of J. W. Scruggs with complainant, July 7th, 1857, was ultra vires and void, or as is untruly alleged in said bill, that "the articles of submission to arbitration were equally so. And the award and decree seeking and effecting simply a construction of the original contract, as to the rules to ascertain the value
32 of improvements and ascertaining that value, did not raise nor
decide the validity of such contract, and the same remains wholly undecided by said award and decree thereon, and wholly unaffected thereby."

Further answering, respondent denies that complainant is not indebted to her in anything or any sum, or that the original contract, the articles of submission, the award, and the decrees thereon, are nul'ities, as is untruly alleged in said bill. On the contrary, said original contract, and the award and the decrees made in pursuance thereof, are valid and binding, all of which was fully settled and adjudged in the said cause of Narcissa Scruggs vs. The Memphis and Charleston Railroad Company, the record of which in the chancery court is referred to and made a part of the bill and this answer.

Further answering, respondent says it was distinctly alleged by her in her said bill of complaint against the Memphis and Charleston Railroad Company that on the 7th day of July, 1857, said J. W. Scruggs made the contract to build said hotel with the said railroad company on the terms named in said contract, which is an exhibit to complainant's bill. That according to the provisions of said agreement it became agreeable to both parties on the 21st day of February, 1871, that said property should be surrendered to said railroad company on the judgment of the amount due to this respondent. To this allegation said Memphis and Charleston Railroad answered under its corporate seal and by its counsel, and admitted the "execution of the contract with J. W. Scruggs, attached as Exhibit A to the bill, and that said J. W. Scruggs conveyed all his right, title, claim, and interest under said
33 lease to his said wife, Narcissa Scruggs, and that certain improvements were erected by the said Scruggs on the land specified in said contract by virtue thereof." Said Memphis and Charleston Railroad Company further admitted that it was "willing to accept a surrender of the said property, and that it would not agree with the complainant, Narcissa Scruggs, in regard to the amount to be paid her, and as to the legal construction of said contract of lease." Said railroad company might then have asserted the untruth that it had no power under the charter to make such a contract, but it admitted not only its power to make contract, but also the validity of the same. Respondent therefore avers that said railroad company is forever estop'ed and precluded by said admission, and by its failure then to set up the defence of ultra vires, or that said agreement was void for the reason set forth in the bill in this cause.

Further answering, respondent says that as to the validity of said contract of submission, and the power of Wicks to bind the company, the said objection was fully made in the answer of the company in said cause, and the record therein distinctly shows that the board of directors of said railroad company authorized said submission, and the same was affirmed by the decree of the chancellor and the judgment of the Supreme Court. Respondent states that the Memphis and Charleston Railroad Company appeared in said cause by its president, its corporate seal, and its attorneys of record, both before said arbitration and before the chancellor when said lease was tried, and before the Supreme Court when the decree of the chancellor was affirmed, as appears from the record
34 of said cause made a part of the bill and answer in this cause. And complainant is estop'ed and forever barred from setting up in this bill any matter or things which were litigated or might have been litigated before said arbitrators or in said suit of Narcissa Scruggs v. The Memphis and Charleston Railroad Company.

Further answering, respondent says that more than two years have elapsed since the rendition of said final decree in said case of Narcissa Scruggs v. The Memphis and Charleston Railroad Company, which was rendered on the 8th day of January, 1872, and the said decree was re-

ceived and in all things affirmed by the Supreme Court, and the same cannot now be revived or reversed. Respondent insists that this court has no jurisdiction of the matter and things in the said bill contained, in manner and form as the same are therein set forth, and that they do not entitle complainant to any relief whatever.

And now, having fully answered, the said respondent prays to be hence dismissed with her reasonable cost, &c.

THE STATE OF ALABAMA,
Madison County:

Before me, , clerk of the circuit court of said county, this day came in person Narcissa Scruggs, who, being duly sworn, says that the facts stated in the foregoing answer as of her own knowledge are true, and those purporting to be derived from the information of others she believes to be true.

NARCISSA SCRUGGS.

Sworn to and subscribed before me this day of May, 1875.

ISAAC F. DELONEY,
Clerk Cir. Court.

35 STATE OF ALABAMA,
Madison County, sct:

I do hereby certify that I am clerk of the circuit court of said Madison County, duly and *and* lawfully elected, qualified, and commissioned, and acting as such, and that by the laws of Alabama I am authorized to administer oaths.

Given under my hand and the seal of said circuit court this 7th day of May, 1875.

ISAAC F. DELONEY,
Clerk of Circuit Court.

Exhibit No. 1 of answer.

THE STATE OF MISSISSIPPI.

Supreme court, October term, 1874. Monday, Dec. 14th, 1874.

MEMPHIS AND CHARLESTON R. R. CO. *vs.* NARCISSA SCRUGGS. } No. 599.

This cause having been submitted at a former term upon the record herein from the chancery court of Alcorn County, and this court having sufficiently examined and considered the same, and being of the opinion that there is no error therein, doth order, adjudge, and decree that the decree of said court, rendered in this cause on the 8th day of January, 1872, be and the same is hereby affirmed. And it is further considered and so ordered, adjudged, and decreed that the appellee do have and recover of the appellant and George P. Hamerly, R. W. Price, John M. Nelson, A. R. Wiggs, and D. E. Coleman, sureties in the appeal bond, the sum of thirty-one thousand six hundred and sixty-six dollars
36 and sixty-six cents ($31,666^{66}) the amount of the decree of the court below, together with the further sum of fifteen hundred and eighty-three and $^{33}/_{100}$ dollars ($1,583$^{33}/_{100}$), being damages at the rate of 5 per centum as allowed by law, as well as interest at the rate of six per cent. per annum on the amount of said decree from the date of rendition

thereof till paid, and also the cost of this cause in this court, and in the court below expended, &c., to be taxed, &c.

Petition for the removal of cause to Federal court.—Filed June 7, 1875.—R. J. Fleming, clerk.

M. & C. R. R. Co.
vs.
NARCISSA SCRUGGS ET AL.

To the honorable Chancellor, presiding in the chancery court at Corinth, Mississippi:

THE MEMPHIS AND CHARLESTON RAILROAD Company
vs.
NARCISSA SCRUGGS ET AL.

The petition of the Memphis and Charleston Railroad Company for removal of this cause to the circuit court of the United States held at O'ford.

Petitioner, the Memphis and Charleston Railroad Company, having its siths & chief office at Memphis, Tennessee, would respectfully represent and show to your honor that it is a corporate body, chartered by the general assembly of the State of Tennessee, on the 2nd day of February, 1846, and subsequently, and from time to time, amended by said general assembly. That the object of such incorporation was the construction of a railroad line from Memphis through the States of Tennessee, Mississippi, and Alabama, on to and in the direction of
37 the city of Charleston, South Carolina; that the right of way was given it by the legislatures of Mississippi and Alabama, and it has for long years been in successful operation between the city of Memphis and the town of Stephenson, Alabama. That the cause in which this petition is filed is one in which the Memphis and Charleston Railroad Company is the plaintiff, and Narcissa Scruggs is defendant, both of whom are citizens of different States; that the suit is of a civil nature in equity, brought in this court upon a matter in dispute exceeding in value the sum of five hundred dollars exclusive of cost, and is a controversy between citizens of different States, the complainant being a citizen of Tennessee and the defendant a citizen of the State of Alabama; and that the controversy is one which can be fully settled and determined between them in the said circuit court of the United States, at Oxford, Mississippi.

Petitioner further states that no trial has ever been had of the cause now sought to be removed, nor has any term of this court arrived at which it could have been tried or was triable, and that it is desirous of having the same transferred to the circuit court of the United States for the northern district of Mississippi, at Oxford, for final adjudication, and to this end is willing, and offers, to tender herewith its bond, with good and sufficient surety, for its entering in such circuit court within the time allowed by law a copy of the record in such suit, & for paying all cost that may be awarded by the said circuit court, if said circuit court shall hold that such suit was wrongfully or improperly removed thereto, & also *and also* for the appearing and entering *& entering*
38 special bail in such suit if necessary.

Premises considered, petitioner prays that it be allowed to file its petition for removal, and that its execution of a proper bond all further proceedings in this cause and count be stayed, & the cause be removed to the circuit court of the United States, at Oxford, Mississippi, for final determination.

Petitioner prays for all such further relief in the premises as it may be entitled to.

HUMES & POSTON,
Solicitors for M. & C. R. R. Co.

STATE OF TENNESSEE,
County of Shelby:

Personally appeared before me, Hunsdon Cary, a commissioner for the State of Mississippi, at Memphis, Tennessee, duly commissioned and qualified, &c., The Memphis and Charleston Railroad Company, by its secretary and treasurer, S. R. Cruse, and made oath in due form of law, that the matter and facts herein above stated are true to the best of its information, knowledge, and belief, and in evidence thereof has hereunto set his hand and corporate seal, at Memphis, Tennessee, this the 2d day of June, 1875.

THE MEMPHIS AND CHARLESTON RAILROAD COMPANY,
By S. R. CRUSE,
Secretary & Treasurer.

Sworn to & subscribed before me this the 2d day of June, 1875.

In testimony whereof, witness my hand & seal at Memphis, Tennessee, this the 2d day of June, 1875.

HUNSDON CARY,
Commissioner for Mississippi at Memphis.

39 We, the Memphis and Charleston Railroad Company, and , sureties, acknowledge ourselves indebted to Narcissa Scruggs & other defendants in the penal sum of five hundred dollars, to be void if the said Memphis and Charleston Railroad Company, the complainant, shall, within the time prescribed by law, enter in the circuit court of the United States for the northern district of Mississippi, at Oxford, a duly certified copy of the records in the cause of The Memphis and Charleston Railroad Company vs. Narcissa Scruggs & others, No. 396, chancery court of Alcorn County, at Corinth, Mississippi, and shall execute all such other & further bonds & bails as shall be required by said court, and shall pay all costs, and abide by all decrees, in said cause made by said court.

In testimony whereof the Memphis and Charleston Railroad Company, and its sureties, have hereunto set their hands and seals the 7th day of June, 1875.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY,
By S. R. CRUSE,
Secretary & Treasurer.
R. C. BRINKLEY, *Surety,*
Pr. D. H. POSTON,
Att'y in Fact.

STATE OF TENNESSEE,
Shelby County:

Know all men by these presents that I, R. C. Brinkley, of Memphis, Tennessee, by these presents nominate, constitute, and appoint W. Y. C. Humes, or D. H. Poston, or both or either of them, my true and lawful attorneys in fact, in my name and stead, and for and my be-

40 half to sign, execute and acknowledge and deliver a bond for the removal of a certain cause now pending in the chancery court of Alcorn County, Mississippi, wherein the Memphis and Charleston Railroad Company is plaintiff, or the complainant, and Narcissa Scruggs and others are defendants, such removal to be made from the said chancery court to the circuit court of the United States for the northern district of Mississippi, at Oxford, and such bond to be executed in my name, as surety on the bond given by said Railroad Company, and with all necessary conditions and stipulations that may be required by law, and all the lawful acts of my said attorney in fact I do as fully ratify as if done by me in my own proper person.

In testimony whereof witness my hand and seal at Memphis, Tennessee, the 3d day of June, 1875.

R. C. BRINKLEY. [SEAL.]

STATE OF TENNESSEE,
Shelby County:

Personally appeared before me the undersigned, commissioner of the State of Mississippi, at Memphis, Tennessee, R. C. Brinkley, the constituent in the foregoing power of attorney, who, being duly sworn, says he is worth the sum of one thousand dollars in property in the State of Mississippi, free from execution, and subject to execution after the payment of all his just debts and liabilities.

R. C. BRINKLEY.

Subscribed and sworn to before me this 3d day of June, 1875.

M. B. TREZAVANT,
Commissioner.

STATE OF TENNESSEE,
City of Memphis:

COMMISSIONER'S OFFICE.

41 I, M. B. Trezavant, a commissioner of the State of Mississippi, duly appointed by the governor thereof, for the State of Tennessee, to reside in the city of Memphis, and take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney or other writings, under seal or not, administer oaths, and take and certify depositions, &c., to be used and recorded in said State of Mississippi, do certify that on this day personally appeared before me the within named R. C. Brinkley, who acknowledged the foregoing power of attorney on the day and year therein mentioned as his act and deed.

Given under my hand and official seal at Memphis aforesaid, this 3rd day of June, 1875.

M. B. TREZAVANT,
Commissioner for Mississippi, at Memphis, Tennessee.

Motion to remove to U. S. court.

THE STATE OF MISSISSIPPI,
County of Alcorn:

M. & C. R. R. Co.
v.
N. SCRUGGS.

Chancery court, June term, 1875.

And the said complainant, by att'y, comes and moves the court, for

reason set forth in petition filed in this behalf, for an order removing the above-entitled cause to the United States circuit court at Oxford.

HUMES & POSTON,
Sol's for Compl't.

The motion to dissolve the injunction in this cause made by the defendant, Narcissa Scruggs, was not heard by the court, but was passed upon, the above motion to remove being sustained by the court.

42 *Answer to petition to remove to Federal court.—Filed June 7th, 1875.—R. J. Fleming, clerk.*

MEMPHIS AND CHARLESTON RAILROAD COMPANY
v.
NARCISSA SCRUGGS. } No. 376.

In the chancery court of Alcorn County, at Corinth.

The respondent answers the petition filed against them and say:

That she admits that the complainant was chartered by the legislatures of the States of Tennessee, Mississippi, and Alabama; she admits that the amount involved is more than 500$.

This respondent expressly denies that she and complainant are citizens of different States; on the contrary, respondent affirms that she is a citizen of Alabama, and the complainant is a citizen of the same State, chartered by its legislature, and she claims that they are citizens of different States. Respondent further states that said cause was submitted to the board of arbitration and they decided in her favor, and that said award was made a decree of the chancery court, and an appeal was taken to the supreme court and the decree was affirmed.

Respondent expressly denies that no trial of said cause has ever been had; on the contrary, it has been fully adjudicated by the board of arbitration, and by the decree of the chancery court, and by the affirmance of that decree by the supreme court.

Respondent therefore states that she has regularly entered her motions on the docket to dissolve the injunctions granted in said cause, and the same is now pending before your honor. And respondent further refers to the pleadings and decrees in said cause, and that of respondent vs. said complainant, as a part of this answer still remaining on file among the records of the chancery court.

43 Respondent denies that complainant has any right to remove said cause to the Federal circuit court, and demands that said petition be hence dismissed with cost.

JNO. B. SALE,
W. F. DOWD,
Sol's for Resp'd'.

Sworn to and subscribed before me this January 7th, 1875.

R. J. FLEMING, *Cl'k.*

Decree.—Filed and entered June 7th, 1875.—R. J. Fleming, clerk.

Chancery court, June term, 1875.

STATE OF MISSISSIPPI,
Alcorn County:

M. & C. R. R. Co.
v.
NARCISSA SCRUGGS.

In this cause this day came the Memphis and Charleston Railroad Company, the complainant, and moved the court upon its petition this day filed to remove the cause to the circuit court of the United States for the northern district of Mississippi, at Oxford, and the defendant, by her solicitor, appeared in court and resisted the motion. Such motion and petition being duly considered, the prayer of said petition is allowed, and bond with sufficient security being given, the same is approved, and the clerk will at once make out a full manuscript of the cause and deliver same to complainant upon the payment of the cost thereof. All of which is ordered and decreed this the 7th day of June, 1875.

C. CULLENS, [SEAL.]
Chancellor.

44 *Bill.—Bill filed & summons issued, May 2d, 1871.—R. J. Fleming, clerk.*

NARCISSA SCRUGGS & JOHN W. SCRUGGS, her husband,
vs.
MEMPHIS AND CHARLESTON RAILROAD Company.

To the honorable Arthur Reynolds, chancellor of the 8th chancery district of the State of Mississippi:

The bill of complaint of Narcissa Scruggs, who are citizens of the State of Alabama, and John W. Scruggs, respectfully showeth that on the 7th day of July, 1857, complainant John W. Scruggs made and entered into an agreement with the Memphis and Charleston Railroad Co., a corporation in said county of Alcorn, Miss., to build a hotel on the grounds of said company, at Corinth, Mississippi, embracing an acre of land, bounded on the west by the Mobile and Ohio Railroad, and on the north by the Memphis and Charleston Railroad, and now embraced in the enclosure of the Scruggs House, in said town of Corinth, Alcorn County, Mississippi. Said agreement is in the words and figures following, to wit: as embraced in the copy of said agreement herewith filed, marked Exhibit A, and prayed to be made a part of this bill. Complainant further states that said J. W. Scruggs conveyed his title to or interest in said property to Narcissa Scruggs, and made valuable improvements on said lot of land, according to contract. According to the provisions of said agreement, it became agreeable to both parties on the 21st day of February, 1871, that said property should be surrendered to said Memphis and Charleston Railroad on the payment of the amount justly due to complainant. But complainant and said Memphis and Charleston Railroad Company could not agree on the con-

struction of said contract or agreement, and the amount of money
45 to be paid to complainant for said property. The construction of the said agreement, and the amount of the value of said property to be paid on its surrender, was, on the 21st day of February, 1871, submitted to the arbitrament and award of Reuben O. Reynolds, Robert C. Brickell, & F. L. Pledge; said agreement for submission was reduced to writing, a copy of which is herewith filed, marked Exhibit B, & prayed to be made a part of this bill. It is provided by said agreement for submission that on the payment of the amount due complainant by said defendant that complainant should surrender said property to them, and that the amount so fixed should be a lien on said property, and that the award of the arbitration should be entered as a decree of the chancery court of Alcorn County, according to the provision of the statute of Miss., and that complainant execute and deliver to defendant a quit-claim deed to said property.

Complainant further states that said arbitrators, according to the articles of submission, specified the 30th day of April, 1871, at Corinth, Miss., for the trial of said issues, reasonable notice having been given to the parties, and on that day said arbitrators did meet, at the Scruggs House, in said town of Corinth, and the parties, the complainant and said Memphis and Charleston Railroad Co., appeared with their counsel, before said arbitration, who, after being duly sworn, and after hearing the written agreements, Exhibits A & B, and hearing the evidence offered by the parties, and the agreement of counsel, did award, order and decree, in writing, that said defendant pay to complainant the sum of thirty-one thousand six hundred and sixty-six $\frac{66}{100}$ dollars, which
46 will more fully and at large appear by reference to the written report of the proceedings of said arbitration, the testimony, and the said decree, which is herewith filed, marked Exhibit C, and prayed to made a part of this bill.

Complainant further states that after said award and decree was made, complainant offered in all things to comply with said decree and award and with said contract of submission, and tendered possession of said property to said Memphis and Charleston Railroad Company, and demanded payment of said sum of thirty-one thousand six hundred and sixty-six $\frac{66}{100}$ dollars, and complainant was ready and willing to execute and deliver a quit-claim deed to said property on the payment of said sum of money, and hereby affirm all things to comply with said submission and award, but said Memphis and Charleston Railroad Company to pay said sum of money, or to comply with said submission and award.

Complainant therefore prays that said Memphis and Charleston Railroad Company be made parties defendant to this bill, and that they be compelled on their corporal oaths full, true, and perfect answers to make to all and singular the allegations, statements, and charges in this bill contained, and that as fully as if the same were here repeated in the shape of interrogatories.

Complainant further prays that the award and proceedings of said arbitration be made and entered as the decree of the chancery court of Alcorn County. That said agreement for arbitration and said award shall be specifically performed. That said defendants shall pay complainants said sum of money, and that complainants' lien for the same on said property shall be enforced; or if the specific relief prayed for cannot be granted, complainant prays for such other or further relief
47 as to your honor may seem just and equitable in the premises. Complainant further prays for a writ of subpœna against said

Memphis and Charleston Railroad Company, returnable to the next chancery court of Alcorn County according to law, and that the same be executed as the statute directs.

KILPATRICK & WHITFIELD,
SALE & DOWD,
Sol's for Complainant.

STATE OF MISSISSIPPI,
Alcorn County:

Personally appeared before me, R. J. Fleming, clerk of the chancery court of said county, John W. Scruggs, one of the complainants in the annexed and foregoing bill of complainant, who, being by me duly sworn, makes oath and says that the facts stated in the same bill, on his own knowledge, are true, and the facts stated on the information of others he believes to be true.

JOHN W. SCRUGGS.

Sworn to and subscribed this 2d May, 1871.

R. J. FLEMING,
Clerk.

HUNTSVILLE, ALA., *July 7th*, 1857.

The Memphis and Charleston Railroad Company agrees with J. W. Scruggs that he may build a hotel on the grounds of the company at Corinth, Tishomingo County, Mississippi, to be used as an eating-house for said road upon the following terms: The said J. W. Scruggs is to furnish the money for said building and other improvements, and
48 pay the said railroad company two hundred and fifty dollars per annum for the use of the ground occupied by said improvements, and keep a first-rate eating-house, satisfactory to said company; and if said railroad company should become dissatisfied with the character of the house kept, they retain the right to pay said party the value of his improvements at the time and take possession of the property; and in case said party becomes dissatisfied with the schedule of the road or its management, that he has the right to give up said improvement', and require said company to pay him their value at the time of such surrender, in either case the property to be valued by disinterested parties; this agreement to be binding on both parties as long as mutually agreeable. Said improvements to be built according to the plan of specification of the general superintendent of the M. & C. R. R., and to his satisfaction. Said party is to board all officers and employees of said company at the usual and customary rates charged by other eating-houses on said road.

Signed by said R. R. company and

J. W. SCRUGGS.

EXHIBIT B.

This agreement, made and entered into this 24th day of February, 1871, between the Memphis & Charleston Railroad Company of the first part, and J. W. Scruggs and Narcissa Scruggs, his wife, of the second part, witnesseth:

That whereas the party of the first part & said J. W. Scruggs did enter into an agreement in the words and figure and to the effect following:

HUNTSVILLE, ALA., *July 7th*, 1857.

49 The Memphis and Charleston Railroad Company agrees with J. W. Scruggs that he may build an hotel on the grounds of the company at Corinth, Tishomingo County, Mississippi, to be used as an eating-house for said road, on the following terms: The said J. W. Scruggs is to furnish money to pay for said buildings and other improvements, and to pay to said railroad company two hundred and fifty dollars per annum for the use of the grounds occupied by said improvements, and keep a first-rate eating-house satisfactory to the company, and if said railroad co. should become dissatisfied with the character of the house kept, then they retain the right to pay said party the value of his improvements at the time, and take possession of the property, and in case said party becomes dissatisfied with the schedule of said road or its management, then he has the right to give up said improvements, and require said company to pay him their value at the time of such surrender, in either case the property to be valued by disinterested parties. This agreement to be binding on both parties as long as mutually agreeable; said improvements to be built according to plans and specifications of the general superintendent of the Memphis & Ch's. R. R. Co. and to his satisfaction; said party is to board all officers and employees of said company at the usual and customary rate charged by other eating-houses on said road.

(Signed by the parties.)

And whereas said J. W. Scruggs has conveyed by deed his interest in said property to said Narcissa, and whereas, according to the provisions of said contract, it has become agreeable to both parties that said property shall be surrendered to the said party of the first part, and
50 the payment of the amount due them for the value of said property under said agreement; and whereas said parties differ as to the construction of said agreement and the amount due the parties of the second part for the value of said property: It is therefore agreed that the construction of said agreement and the amount of the value of said property to be paid on its surrender is hereby submitted to arbitrament & award of Robert C. Brickell, Reuben O. Reynolds, and F. L. Pledge, who shall meet at Corinth, Mississippi, on a day to be specified by them, reasonable notice to be given to the parties and their counsel; the parties to appear by themselves and their counsel, with the privilege of introducing all legal evidence. They shall settle the construction of the said contract, and fix the amount that is justly due by the party of the first part to the parties of the second part for the value of said property, and on the payment of said sum so fixed, the parties of the second part shall surrender said property to the parties of the first part, and the amount so fixed shall be a lien on said property. It is further agreed that the decree of said arbitrators shall be intended as a decree of the chancery court of Alcorn County, and all the testimony shall be entered as a part of the record of said chancery court according to the provisions of the statute of Mississippi. It is further agreed that the cost of said reference and a reasonable compensation to said referees shall be mutually born' by parties of the first and second part. It is directly agreed that only the questions of the first legal construction of said agreement as to the value of said improvements, and the amount which shall be paid, are submitted to said arbitrators, and all other questions arising under said agreement, whether as to the right of said parties to recover damages or otherwise, are hereby expressly re-
51 served. It is further agreed that on the payment of the amount

so awarded, and the surrender of the property, the parties of the second part shall execute and deliver to the parties of the first part a quit-claim, and conveying all their interest in said property.

(Signed in duplicate.)

MEMPH. & CHAS. R. R. CO.,
By M. J. WICKS, *President.*
J. W. SCRUGGS.
NARCISSA SCRUGGS,
By J. W. SCRUGGS.

EXHIBIT C.

NARCISSA SCRUGGS }
vs.
M. & C. R. R. CO. }

Be it remembered that on this the 20th day of April, 1871, and continued until this the 21st day of April, 1871, came on to be heard and tried the question submitted to us by the Memphis and Charleston Railroad, and J. W. Scruggs & Narcissa Scruggs, in the words and figures following, to wit:

This agreement, made and entered into this the 24th day of February, 1871, between the Memphis and Charleston Railroad Company, of the first part, and J. W. Scruggs and Narcissa Scruggs, his wife, of the second part, witnesseth:

That whereas party of the first part and John W. Scruggs did enter into an agreement in the words and to the effect following (F. R., page 525):

HUNTSVILLE, ALA., *July 7th*, 1857.

The Memphis and Charleston Railroad Company agrees with J. W. Scruggs that he may build an hotel on the ground of the *of the* Co. at Corinth, Tishomingo Co., Miss., to be used as an eating-house for
52 said road, on the following terms: The said J. W. Scruggs is to furnish money to pay for said buildings and other improvements, and pay to said railroad company two hundred and fifty dollars per annum for the use of the ground occupied by said improvements, and keep a first-rate eating-house, satisfactory to the company, and if said railroad company shall become dissatisfied with the house kept, then they retain the right to pay said party the value of his improvements at the time, and take possession of the property; and in case said party becomes dissatisfied with the schedule of the road or its management, then he has the right to give up said improvements and require said company to pay him their value at the time of such surrender. In either case, the property to valued by disinterested parties. This agreement to be binding on both parties as long as mutually agreeable. Said improvements to be built according to the plans and specifications of the general superintendent of the M. & C. R. R. Co., and to his satisfaction; said party is to board all officers and employees of said company at the usual and customary rates charged by other eating-houses on said road.

(Signed by both parties.)

And whereas said J. W. Scruggs has conveyed by deed his interest in said property to said Narcissa Scruggs and whereas; according to the provision of said contract, it has become agreeable to both parties that said property shall be surrendered to the said party of

the first part, on the payment of the amount due them, for the value of said property, under said agreement; and whereas said parties differ as to the construction of said agreement and the amount due by the party of the first part to the party of the second part for the
53 value of said property: It is further agreed that the construction of said agreement and the amount of the value of said property to be paid on the surrender is hereby submitted to the arbitrament and award of Robert C. Brickle, Reuben O. Reynolds, and F. L. Pledge, who shall meet at Corinth, Mississippi, on a day to be specified by them, reasonable notice being given to the parties and their counsel, with the privilege of introducing all legal evidence. They shall settle the construction of said contract, and fix the amount that is justly due by said party of the first part to the parties of the second part for the value of said property, and on the payment of said sum, so fixed, the parties of the second part shall surrender said property to the party of the first part, and the amount so fixed shall be a lien on said property. It is further agreed that the decree of said arbitrators shall be entered as a decree of the chancery court of Alcorn County, and all the testimony shall be entered as a part of the records of said chancery court, according to the provision of the statute of Mississippi. It is further agreed that the cost of said ref/erence and a reasonable compensation to said ref/erees shall be mutually born' by the parties of the first and second part. It is distinctly agreed that only the questions of the legal construction of said agreement as to the value of said improvements and the amount which shall be paid are submitted to said arbitrators; and all other questions arising under said agreement, whether as to the right of the parties to recover damages or otherwise, are hereby expressly reserved. It is further agreed that on the payment of the amount so awarded and the surrender of the property the parties
54 of the second part shall execute and deliver to the party of the first part a quit-claim deed, conveying all their interest in said property.

(Signed in duplicate.)

MEMPHIS & CHAS. R. R. CO.,
By M. J. WICKS, *President.*
J. W. SCRUGGS.
NARCISSA SCRUGGS,
By J. W. SCRUGGS.
N. SCRUGGS.

STATE OF ALABAMA,
Madison County:

Be it remembered that on the 31st day of March, 1871, before me, the undersigned, a justice of the peace within and for the county of Madison, in the State of Alabama, came Narcissa Scruggs, wife of John W. Scruggs, who is personally known to me, and whose name is signed to the foregoing agreement as a party thereto, and she acknowledged the same to be her voluntary act and deed for the purpose therein contained. And the said Narcissa Scruggs having been by me first made acquainted with the contents of said agreement, acknowledged on a private examination, separate and apart from her said husband, that she executed the same freely and without compulsion or under influence of her said husband.

Given under my hand this the 31st day of March, 1871.

R. D. WILSON, *J. P.*

STATE OF ALABAMA,
Madison County:

I, Louis M. Douglas, judge of the court of probate in and for said county & State, do hereby certify that Robert D. Wilson, whose
55 name and genuine signature appears to the annexed certificate, was at the time of annexing the same a justice of the peace in and for said county, duly commissioned and qualified, and as such his acts and doings are entitled to full faith and credit.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at office this the 1st day of April, 1871.

LOUIS M. DOUGLAS,
Judge of Probate.

Thereupon the following testimony was taken in writing:

Proceedings of board of arbitration between M. & C. R. R. and J. W. Scruggs and Mrs. N. Scruggs.

The articles of submission read, and arbitrators sworn by Chancellor A. E. Reynolds.

Col. A. E. REYNOLDS, being sworn, testifies as follows: I have lived in this town and vicinity since 1868, and have known the town of Corinth since its first location. My recollection is that the ground upon which the first hotel was built was wood, but a small portion of it was swampy; the bal' of it was dry and covered by wood & timber.

(Objected to, as the value of the ground is not in controversy.)

Do not recollect the time the cars first ran through, but think it was in September, 1857. The lands upon which the hotel stands was at the time the hotel was built worth, I think, about 2,500 or 3,000 dollars. I think improved real is worth more than it was then; I have been living in the town of Corinth one year, and in the suburbs two years, and have knowledge of the value of real estate in Corinth; lots were worth in 1857 from 300 to 500 dollars per lot, and there are 16 lots in an acre. This estimate is made from the price at which they sold in the business
56 part of the town. The hotel property renting from 5 to 7 thousand dollars or upwards a year, and the receipts being 15 thousand dollars, and an annual net income of 5 or 6 thousand dollars, the property, I think, would be worth 50 or 60 thousand dollars.

(Objected to as irrelevant.)

Cross-examined:

Have no idea what would take to insure property valued at 50 or 60 thousand dollars. I think real estate paying 10 per cent. interest a good investment. Have known real estate to pay that per cent. The location of the property in controversy gives it its value. Independent of the improvements I think the land upon which the hotel stands is worth a great deal more than it was in 1857; I think the ground upon which the hotel stands would be worth 1,000 dollars a lot if to be used as business lots, if the hotel was removed. In estimating the value of the land, I am speaking as if the land was private property and not subject to the restriction of R. R. Co. The ground upon which the hotel, to be sold for the purpose of building a hotel by the R. R. Co., I think would be worth about ten thousand dollars.

(Objected to, as the value of the land is not in controversy.)

I think the M. & O. R. R. was completed and running past Corinth in 1860.

By the Arbitration:

Do not think there is any difference in the value of now and the 24th of February, 1871; my estimate of the value of this property is not a cash estimate, but according to way we sell lots here. My estimate the cash value of the property would be 800 per lot or 12,800 per acre. I think the value would even depreciate from that date if it were sold for any purpose but for a hotel. Do not know what the value of the building upon said land is. Do not know what the value of the land with the improvements is. Have made my estimate upon the supposed rental value. I think the location for a hotel is worth ten thousand
57 dollars; do not think the location for a hotel would be worth anything if the lease was determinable at the will of the R. R Co.

H. MITCHELL, being sworn, testifies as follows:

I have resided in Corinth since 1855 and have been familiar with the value of real estate since that time. Now the condition *the condition* of the ground upon which the hotel was built at that time, there is but little difference in the condition of it now and then; there was a low drain running through one corner of it; there was timber standing upon it; do not remember what year the cars on the M. & C. R. R. ran through here, but think the cars on the M. & O. R. R. ran through in 1860. In May, 1857, I think the land upon which the hotel stands was worth 2 to 3 thousand dollars per acre.

(Objected to, as the value of the land was not in controversy.)

If the hotel property yields a net income of from 5 to 6 thousand dollars per year, I think it would be worth 40 to 50 thousand dollars. Real estate which will bring from 5 to 7 thousand dollars per annum net is worth the sum or sums of money which, at 10 per cent. interest, would produce those amounts or either of them. If the trees and stumps were still standing and no hotel having been built, I think the lots each would be worth a thousand dollars or sixteen thousand dollars per acre. If the whole acre were put up and sold in the condition it was in 1857, exclusively for the purpose of building a hotel thereon, I think it would be worth as much for that purpose as for any other business.

Cross-examination:

58 It would cost to put the land on which the hotel now stands in its present condition, to fill up the drain and clean the timber off, about 300 dollars; don't think the wood which stood upon the land would pay any one for cleaning it up; do not think the timber upon the land would be worth to a man building a hotel as much as it would cost him to clear up the land; that it would cost 15 or 20 dollars more to clear the acre of land than the timber was worth; my estimate of the value of the property was made upon the basis of a fee simple title; if the interest of the party leasing the property which would yield an income of from 5 to 7 thousand dollars per annum was determinable by the party leasing in thirty days, do not think his interest would be worth anything. If the hotel were removed or if there had never been a hotel on the land, I think the land would be worth as much now for hotel purposes as it ever was; do not know how much the value of the property would be enhanced from the fact that a hotel had stood here, and it being known what a hotel would pay, but it would be worth more from this consideration; I think the hotel has improved the value of the location; I have built a good many houses in Corinth and am familiar with

the cost of building houses; do not know what it would cost to build such a house as this hotel.

(Objected to as being irrelevant.)

Re-examined:

I think the land upon which the hotel or any business house with a well established business is worth more in consequence of its being a good location and a good business having been done there and having established a reputation.

(Objected to.)

59 By the Court:

I think the location is a good business point, and the reputation of the house standing upon the land will enhance the value of the land.

Question. What is the value of those improvements on a lease for an indefinite length of time, and on payment of an annual rent of 250$, lease to be determinable by the M. & C. R. R. on failure of Scruggs to keep a first-rate eating house, and by Scruggs in event of dissatisfaction with schedule of the road?

Answer. I think the improvements, with privileges connected with the Pase, would be worth 25 or thirty thousand dollars. Do not know what is the present value of these hotel improvements disconnected with the lease, as I consider the above valuation a cash valuation. If the hotel kept had been an inferior one, and poorly kept, I do not think it would enhance the value of the land upon which it stands. My testimony as to the fact of a hotel standing upon the land, enhancing the value of the land, was made upon the basis of its being a good hotel.

(Objected to.)

Question by . Suppose the ground was worth twenty-five hundred dollars in May, 1857, and was only worth the ground rent of 250$ per annum, and improvements put on the property until its net annual rent is now worth 6,000$ and this increased value was the result of the improvements, and the business established, what is the value of the said improvements, supposing money to be worth 10%?

(Objected to.)

Answer. It would be worth the amount of money it would take to produce 6,000$ at 10%, deducting the annual ground rental prior to building saide improvements, 250$. I mean that any property
60 that will rent for 6,000$ net is worth 60,000$.

T. P. YOUNG, being sworn, testifies as follows: I have resided in the town of Corinth about 18 months, and in the county 20 years. Do not know the value of real estate in the town of Corinth. I have twice made written propositions for friends of mine, one to Maj. Wicks, and one to Maj. Scruggs, to rent the hotel; one offer was $6,500 a year, payable monthly in advance. And the other was $6,000 a year with the privilege of keeping the hotel 8 years and 8 months. Property which will rent for the above amount annually I consider worth, after deducting the expense of insurance, fifty to fifty-five thousand dollars.

Cross-examined:

The conditions of Mr. Hill's proposition to Mr. Wicks were to pay rents monthly, and give security for the payment, and the R. R. Co. should protect him from venders on the platform, and to guarantee him two trains daily, and take the furniture at a fair valuation after the expiration of the lease. Do not know what Mr. Gillenwaters knows of the conditions of the lease between M. & C. R. R. Co. and Maj. Scruggs.

When he made the proposition to rent the property there were no conditions in Mr. Gillenwaters' proposition. The proposition of Mr. Gillenwaters was made since the 24th day of February, about 2 weeks since I think. I am informed that the rate of insurance upon such property is from 3 to 4%. At my valuation of the property in question I think the whole amount should be covered by insurance. I should think that the rent of the property, and the value of it, depends in a great
61 measure upon the railroad company giving it eating trains. Do not know what Hill or Gillenwaters would have given rent for it without any train eating at the house.

J. L. WOFFORD, being sworn, testified as follows: I have resided in Corinth since Feb'y 1867. I am acquainted with the value of real estate in the town of Corinth. Have seen the lease between Maj. Scruggs & the M. & C. R. R. Co. I would estimate property which would produce an annual rent of $5,000 worth fifty thousand dollars.

Cross-examined:

Property was worth more in 1867 than it is now. In estimating the property I have reference to a fee-simple title. I have heard real estate men say 8 per cent. on the investment was better than loaning the money. Property would have to rent for about $7,000 to derive a net income of 5,000$. Have never kept a hotel or kept one in repair. Have no experience in such things, and my opinion is predicated upon what I have heard others say.

Redirect:

Question. If Scruggs has a perpetual lease on the hotel property on condition that he keeps a first-rate eating house and pays an annual ground rent of 250$, and he complies with those conditions, and the hotel is worth 5,000$ a year rent, net, what would be the value of Scruggs' interest in the property?

(Objected to.)

Answer. If it were mine I would not take less than fifty thousand dollars for it. I mean the above is the value. There was offered for the seven years' lease, by Hanie & Bro., friends of mine, either thirty-six thousand or forty-six thousand dollars; thirty thousand dollars to be paid in cash and the balance on short time. I think the value of the property depends, in great measure, upon whether or not the
62 railroad company gives it eating-trains. I think that if both railroads were to take all eating-trains from the house it would deteriorate from the value at least one half of my former valuation.

GEO. COX, being sworn, testified as follows: I know something of the business of this hotel and have examined the books; was a clerk in the house before the war. Have seen Mr. Scruggs' contract with the railroad company. I proposed to give Mr. Scruggs 6,000$ a year rent for it, and I considered it worth that amount. I proposed to take the house for five years, and to pay my rents monthly. I was, according to my proposition, to return the property in good condition at the end of the 5 years, and to put a coat of paint on it.

(Objected to.)

Cross-examination:

My proposition for the rent was with the understanding that I was to have the benefit between Scruggs and the M. & C. R. R. I suppose the property would be worth about three thousand dollars rent if the railroad was even not to make an eating-house of it.

J. E. GILLENWATERS, being sworn, testifies as follows: I have been familiar with Corinth since it was first built. I consider the annual rent of the property worth 7,000$; I offered this for it with the privilege of keeping it from one to ten years.

Question. If Scruggs has a perpetual lease on the property on condition that he kept a first-rate eating-house and paid 250$ ground rent, and the annual rent of the hotel is worth seven thousand dollars net, and the conditions were all complied with, what is the value of Scruggs' interest?

63 Answer. I would consider his interest worth seventy thousand dollars.

Cross-examination:

My estimation of seven thousand dollars a year rent is based upon the condition that the house be continued an eating-house for the railroad. If it was in the power of the railroad to determine the lease at any time, don't think I would rent the property at all. If the railroad co. had the power, and were never to stop a train to take meals at the house, I would not give half so much for it as I propose. If both roads had the power, & were to stop all trains from taking meals at the house, I think it would be worth 3,500$. I will still take the house, after the litigation, according to the terms of the contract between Scruggs and the Rail R. Co., and pay the $7,000 year rent.

H. F. HILL, being sworn, testifies as follows: I have never examined this hotel property thoroughly. Have resided in Corinth six years; am in business, and familiar with the value of real estate. I think the annual rent of this property is worth $6,000. I first made my proposition to Maj. Scruggs and then to the R. R. Co.

Cross-examination:

My estimate of the rental value of the property was based upon my proposition; the conditions of my proposition were that the co. granted me two eating trains daily, and to stop all huxtering on the platform, and that I would purchase the furniture at a fair valuation, and the company to buy the furniture at the expiration of the lease, lease
64 to continue until the 1st of January, 1880, as stated in the written proposition; the hotel to be kept in repair by the R. R. company. Would not have had it for one year. I would have given $4,000 if the company had stopped all eating-trains. I would not give more than three thousand dollars for it if the company refused to repair the house and keep it in repair, and to stop all huxtering on the platform. If the furniture was all taken, and all the conditions taken away, I would not take it at all.

Written proposition herewith tendered:

CORINTH, MISS., *Mar. 29th*, 1871.

To the President and Board of Directors of the Memphis and Charleston Railroad:

GENTLEMEN: I will make you the following proposition for the rent of the "Scruggs House," giving you ample security for the rent in the persons of E. Rubel & Co., H. Mitchell, & Daniel Baum, for both of the rent and that I keep a first-class hotel. I will give you six thousand dollars a year rent, payable monthly or quarterly, or in any manner you prefer, and will rent it at the same rate up to the first day of January, 1880, you giving me permission to keep the house in good repair at the

expense of the company, and all the addition I make in furniture, both bed-room and dining, to be taken by the company, at the end of the time, on valuation by disinterested persons, and also that the company bind themselves to give me two meal trains per day and stop all huxtering of meals on the platform.

H. F. HILL.

The above offer includes all the furniture and fixtures now in use in the above-described hotel.

H. H. HILL.

65 B. P. SCRUGGS, being sworn, testifies as follows: I am a nephew of J. W. Scruggs; I have been in the hotel since January, 1868. At first I was an assistant book-keeper or one of the clerks of the hotel. I afterwards had charge of the dining room, besides the outside business. The gross annual income during the year 1870 was about fifty-two thousand dollars. It takes about 50% to run the house, including repairs and insurance on the property. The annual rent of the bar and billiard room is worth 3,750$. When I came here there was no meal trains on the M. & O. R. R.; no patronage from that road, except the passengers lying over. There are five meal trains now stopping on that road. I made the arrangement with the M. & O. R. R. Co. to secure their patronage from them.

(Objected to.)

The patronage of the M. & O. R. R. is worth more than the M. & C. R. R. I think that one-half of the net income of the hotel is derived from persons who come on the various roads and ly over at the house. I am not acquainted with the value of real estate in Corinth. There is more patronage to the house from the town and country than there was when I came here. There is a considerable amount of local custom. I have examined the contract between Scruggs and the R. R. Co., and I consider Scruggs' interest worth annually six thousand dollars if the contract is carried out by both parties.

(Objected to.)

Cross-examined:

My construction of the contract is, that if Scruggs keeps the house, he must keep a first class eating-house, and that the railroad must make it an eating-house. I think, under my construction of the con-
66 tract, that the railroad co. has the right to change the schedule, so as to make it unprofitable as an eating-house, and in consequence of this Scruggs proposes to surrender it, according to the terms of the contract. The Memphis & Charleston, by changing the schedule, have rendered the house unprofitable as an eating-house, so far as that road is concerned. I do not know that the house is unprofitable, so far as the M. & O. R. R. is concerned. I think the profits now derived from the M. & C. R. R. are about the same that they were during the month of December, 1870. There has been no change of schedule since that time which effects this house.

(Objected to.)

W. G. CAMPBELL, being sworn, testifies as follows: I do not live in Corinth, and do not know that I am acquainted with the value of property in Corinth; was here in the year 1857; have never been directly connected with the hotel, but kept a boarding-house in Memphis. Have examined the condition of the business of the hotel. I proposed to give 600$ per month rent for the property, and think that is the rental value

of it. The value of property which will pay that rent is worth, I suppose, about 35 or 40 thousand dollars; but do not know without making a calculation. I suppose that the land, without a building and with the timber all on it and with risk of building a country trade and securing the patronage of the railroad, would be worth from two to three thousand dollars.

(Objected to.)

Cross-examination:

Col. Reynolds has the written proposition I made for the rent of the property. My proposition was made from the information I had
67 of the terms of the contract between Scruggs & the M. & C. R. R. Co.

(Objected to.)

The contract was here read to the witness. If the company under the contract has a right to demand possession of the house at any time, because the keeping of the house were not satisfactory to the company, then I would not give for it more than 5 or 600$. If in addition to this power of the company to demand possession of the house, because not satisfactory to it, whether it should run a schedule satisfactory to me or not, it has also the further power so to change the schedule as not to make the hotel an eating house for the road at all, then I would give greatly less than 5 or 600$; I would still give $400 a month.

What is the value of a piece of ground on which there has been a hotel which has long been established, and has an extensive and valuable custom established, and worth an annual rental of $7,000.00, and a piece of ground on which no hotel has ever been kept, and on which the trade must be built up?

(Objected to.)

Answer. The land on which the business has been established is worth at least fifty per cent. more.

Taking into consideration that the net income is $25,000.00 from the established business, from the different roads and the local trade, and supposing that the patronage that lie over from the different trains are worth more than one-half of the net income, what would be the value of all improvements including its established patronage, and how much more would it all be worth than the naked ground without any established business, or any improvements?

Answer. Under the circumstances I would estimate the improve-
68 ments at forty thousand dollars. The actual cost of the erection of buildings is a different matter from what may be the value of the business carried on in such building; the actual cost of the building is fixed and certain, whether the investment be a good one or a bad one; the profit or loss on the money invested in the building must depend on the amount yielded by the business carried on in it. If the amount yielded by the business is more than the interest on the outlay for building, and the further outlay incident to the conducting that business, then there is a profit; but to what per cent. depends on the amount of profit as applied to the aggregate outlay. So whether a hotel erected on a vacant lot, depends upon the future, or failure of the party making the hazard of the investment. Therefore the question as to the cost of the improvements for a new hotel upon a vacant lot cannot be effected by what may be the future success of the enterprise.

(Objected to.)

If, therefore, under a contract between A & B, whereby B erects a hotel on a vacant lot at his own cost, with the right to surrender the same property to A upon a certain condition, and when so surrendered

A has to pay to B a reasonable value for the said building, at the time of the said surrender, then A must pay what it would reasonably cost at that time to erect said building without reference to the rental value of said building to A, be it more or less. In other words, if it broke A to pay for the reasonable cost of said building had they been burnt down at the time of the surrender, he must pay that amount to B, without reference to the use which A could then apply them, and although
69 he could apply them to no use at all.

Mr. SAWYERS, being sworn, testified as follows: I moved to Corinth in July, 1856, and remained here until Corinth was evacuated by the troops. Have bought and sold property in Corinth, and am as much acquainted with the value of real estate as most of the citizens. I am trying to build the cotton factory. Am acquainted with the business of the hotel for some time. My occupation is merchant and banker.

What is the difference per cent. between the value of a piece of land for hotel purposes like that on which the Peabody Hotel or Astor House stands, with a long-established business & custom, supposing the building to be ruined and destroyed, and *and* the value of a like piece of land for hotel purposes on which no business had ever been done or established in the same locality, for hotel purposes?

(Objected to.)

Answer. I would say as a general rule the land would be worth a good deal more. I cannot say as to the different per cent.

Question. Suppose that in May, 1857, the ground on which the hotel is situated was worth *was worth* $2,500 or 3,000 dollars, and that Scruggs removed the trees & stumps, &c., built a hotel, received the custom of the railroad and a large local custom, and that the net profits of the business is 25,000 dollars per annum, an dthe annual rent is worth $7,000, and he has expended $60,000 in building and keeping up the hotel, what is the value of his improvements on the lease, taking into consideration all these circumstances?

Answer. I consider the property very valuable; should say that it is worth fifty thousand dollars as an investment. I think the im-
70 provements have enhanced the value of the land forty-seven thousand dollars.

Question. Suppose no hotel had ever been built here, no business ever established, and the land now had the trees and stumps upon it, what be the present value of the acre of land for hotel purposes exclusively?

Answer. In my judgment the acre of land would be worth 2,500 or 3,000 dollars.

Cross-examination:

The present value of the land, exclusive of the hotel buildings, is worth, I think, 6,000$. If I owned land upon which another party had built improvements, I would not give more for the improvements than it would cost to put them up anew. And if they were old, would deduct what I think they would deterio'ate in value by age or decay, though would take into consideration the rental value of the houses or improvements, and the adaptation to the business for which I intended them.

By the court:

The improvements from their location, and from the profits reasonably expected from them, and as a hotel, I consider worth forty-four thousand dollars. I do not consider myself compelled to judge as to the mechanical value of the improvements upon the land, as I am no mechanic. Under the terms of the contract between Scruggs and the M.

& C. R. R. Co., I consider the improvements worth, under the construction of said contract, in cash, in the market from thirty to thirty-five thousand dollars.

Question. Suppose the acre of land worth 2,500 or 3,000 dollars in 1857, and the M. & C. railroad gave to Scruggs a perpetual lease,
71 on condition that he keep a first-rate eating-house and the payment of 250$ per annum rent, and the railroad was bound to make it an eating-house, and Scruggs erected hotel buildings and established a business and trade worth $25,000 dollars net per annum, and an annual rent of seven thousand dollars, what is the value of the Scruggs improvements?

Answer. I should think his interest would be worth forty-four thousand dollars, but by a forced sale, thirty to thirty-five thousand dollars. I mean by a forced sale, a sale for cash. There is a difference between an auction sale and a sale by private parties in the market for cash. I think that the property could be sold by a private sale for cash for forty-four thousand dollars, by taking time and making the necessary exertions.

J. W. SCRUGGS testifies as follows: The condition of the ground upon which the hotel stands was about as the gentleman have stated; it was in the woods, with a large pond of water standing upon it. It had not been improved at all. Since that time I have expended upon improvements and in clearing up the land, upon the old hotel which was burned down, about 36,000$ and upon the present improvement a little over $24,000. The gross receipts for the year 1870 and up to this time of 1871 was , and the expenditures, cost of running the hotel, was from fifty to fifty-five % of the gross receipts. Over one-half of the gross receipts is derived from persons stopping off on business, and lying over waiting for the trains. I think the annual value of the bar and billiard room is about 5 to 6,000 dollars; the annual rental value
72 of the property I think is worth $7,200; have been offered that amount for it.

Question. How much land is there? I think from ¾ to one acre.

Question. Suppose that land worth in 1857, when you took it, 2,500 or 3,000$, and construing your contract with the M. & C. R R. a lease on the land as long as you kept a first-rate eating house and on the payment of 250$ per annum ground rent, and taking into consideration the established business, its annual profits, and its annual rental value, for what amount could you sell your improvements in the market for cash, by taking a reason' length of time to negotiate?

Answer. I think I could get fifty thousand dollars in cash for it. The M. & O. R. R. began to stop trains and take meals at my house about 2 years since, and their patronage was secured through the instrumentality of my agent. I charge for railroad men two-thirds less than regular rates. I board engineers and conductors free of charge.

Cross-examination.

The furniture is not included in my estimate of the value of the house (25,000$); my estimate of its value is based upon its cash value now. I think the house is in about as good condition now as when it was built four years ago. I think possibly the w'are and t'are has depreciated the value of the house 15 %. We had only one eating train in December last, though have two now; freight trains stop here for meals all the time, and have always had one passenger train for meals.

By the court.

The present value of the improvements, their real value I think, is

20,000$; don't think they could be put here for less than that
73 amount. I think the improvements with the value that would attach to them, from their location and business, are worth forty thousand dollars. I think I could sell the property for cash by taking a reasonable time to negotiate for 35,000$; I think the property under the restriction of the contract between myself and the R. R. Company is worth fifty-five thousand. The rental value of the property would be diminished three hundred dollars by renting the house without the furniture. My rate of insurance is 3½ %, and I think five hundred dollars would keep the house thoroughly repaired for one year. The M. & C. R. R. Co. cannot so change their schedule of the road so that the keeping of the house would prove a loss, but they could so change it as to cause the house to loose the patronage of the road.

Examination of witnesses by the M. & C. R. R. Co.

Mr. JUMPER, being sworn, testifies as follows: I am a builder & general contractor, and live in Memphis, and am a leading master-builder in that city. I have examined the "Scruggs House" so as to arrive at the price for which the building could be built now, and feel that I am competent to give my opinion as to what such a building could be built for. I think it could be built for $19,038. I will put up the building for that money. My estimate is a cash estimate. In building such a building at that price I would expect to make $3,000 profit. I think the depreciation of the value of the building, from the time it was built until now, would be ¼. I have examined every kind of work in the building.

74 Cross-examination:

I never built a house in Corinth. I was in Memphis in 1866 & 1867, and am acquainted with the price of building material at Corinth during that time, and acquainted with the price of labor in Corinth at that time, though never built a house in Corinth. I would come from Memphis and bring my hands and buy the material here, and build a house here for that price. A building like this one, kept in repair, would last about 20 years.

Col. MERRIWEATHER, being sworn, testifies as follows: I am chief engineer of the M. & C. R. R., and know the value of such a building as the hotel, and have examined the building, and think it could be put up anew for about $18,000, and think its present cash value is about $16,000.

Cross-examined:

Have been living in Memphis since 1853. Cannot say that I know of any frame buildings that are 50 years old. I know of buildings (frame) which have been standing from 18 to 20 years. Have never seen the house at Mt. Vernon, the residence of Washington. The depreciation in R. R. buildings, I have noticed, is about from 4 to 8 per cent, and think the depreciation upon this building, annually, would be about 8%. I know of some frame buildings in Kentucky which have been standing for 35 years. The lumber used in the construction of this building is the common Tishomingo pine, which is not so good and durable as the Gulf pine, or long leaf pine.

75 Mr. PRESTON, being sworn, testifies as follows: I am road-master of the M. & C. R. R., and am a competent judge of the value of this building, and have examined the building as to the cost of what

I think it would cost, about $16,000, to put the building here now anew. The building is now worth, as they stand, about $14,000.

Cross-examined:

We certify that the foregoing pages, from one to fifty two inclusive, the substance of the testimony introduced before us, as arbitrators in the matter of Memphis & Charleston R. R. Co. & J. W. & Narcissa Scruggs.

R. C. BRICKELL.
R. O. REYNOLDS.
F. L. PLEDGE.
Arbitrators.

And we, the undersigned arbitrators, after hearing the argument of counsel, and all of the evidence, and being fully satisfied, do order, adjudge, and decree, that the Memphis and Charleston Railroad shall pay to said Narcissa Scruggs the sum of thirty-one thousand six hundred and sixty-six dollars and sixty-six cents, in full payment of all the improvements placed on the ground occupied by the Scruggs House on the grounds of said company, at Corinth, Mississippi; and on the payment of said sum of money the said Narcissa Scruggs shall deliver possession of said hotel to said railroad company.

We do further decide and decree, that the true construction of the contract is, that by its terms J. W. Scruggs acquires a perpetual lease on the ground occupied by the said hotel on the payment of the
76 sum of two hundred and fifty dollars per annum rent, and subject to be defeated by the Memphis and Charleston Railroad Company, only on the condition that Scruggs failed to keep a first rate eating-house, and by the said J. W. Scruggs, on condition that said Memphis and Charleston Railroad failed to use said hotel as an eating-house.

We further determine, that from the evidence in the case and the articles of submission and contract, that the sum to be paid by the Memphis & Chas. R. R. to said Narcissa Scruggs is, as heretofore mentioned, as the value of the property surrendered to the Memphis & Charleston Railroad.

In making this decision we have only regarded the testimony which deemed legal, without deciding in detail all the objections thereto.

It is further ordered that this decree, embodying all the evidence, and said articles of submission, shall be entered as a part of the records of the chancery court of Alcorn County, Miss., as provided by the statute.

Ordered, adjudged, and decreed this the 21 day of April, 1871.

ROBERT E. BRICKELL. [SEAL.]
R. O. REYNOLDS. [SEAL.]
FRANCIS L. PLEDGE. [SEAL.]

J. W. SCRUGGS AND NARCISSA SCRUGGS, complainants,
v.
THE MEMPHIS & CHARLESTON RAILROAD Company, defendants.

The defendants move the court, or arbitrators in open court,
77 for an appeal from their decree ordered in this case, and that such appeal operate as a supercedias.

BEENE & CURLEE,
ELLIOTT & PHELAN &
W. M. INGE,
Att'ys for Defendants.

If we have the power, we grant the appeal prayed for.
April 21st, 1871.

R. C. BRICKLE.
R. O. REYNOLDS.
F. L. PLEDGE.

Answer.--Filed May 16th, 1871.—R. J. Fleming, Clerk.

J. W. & N. SCRUGGS
v.
M. & C. R. R. CO.

The said defendants in obedience to the process of court served upon them, in said cause, comes and makes the following answer to the matter alleged in complainants' bill, but reserving to itself all the advantages, that to which it may be entitled by the many defects, irregularities, and imperfections of the said bill.

Defendant admits the execution of the contract with J. W. Scruggs attached as Exhibit A to said bill, and that the said J. W. Scruggs conveyed all his right title and interest, under said lease, to his wife Narcissa Scruggs, and that certain improvements were erected by the said Scruggs on the land specified in said contract by virtue thereof.

Defendant admits that it was willing to accept a surrender of said property and that it could not agree with the complainant in regard to the am't to be paid to the complainant, and as to the legal construction of the said contract of said lease.

78 Defendant denies that it ever intered into any contract with complainant to submit the said matters of dispute to arbitration, or that it ever signed said article of submission, or in any way agreed to be bound by any award to be made by said Robert C. Brickell, R. O. Reynolds & F. L. Pledge, or by any other person, and that the same is utterly null and void, so far as the defendant is concerned. Defendant alleges that it is an incorporation, incorporated by the legislatures of the States of Tennessee and that the right and power to make all contracts, and to manage its affairs, are confided by the said charter, solely to a board of directors elected by the stockholders of the company.

Defendant alleges that the said contract of submission to arbitration of its rights under the said original agreement with the said John W. Scruggs for the erection of a hotel at Corinth, as specified in the said bill, was wholly unauthorized by it; that neither by order, resolution, or any other corporate act, did it enter into, authorize, acquiess in or ratify the said contract, or submission to arbitration of its rights, and that the signature of the said Wicks to said contract was wholly unauthorized by the said corporation or otherwise. And that the same is of no effect to bind the said defendants, as a party to the same.

Defendant further says that the property involved in said arbitration is certain real estate situated in the said town of Corinth, in Mississippi, belonging to defendant, and that by the said alleged agreement of submission to arbitration of the am't to be paid by the defend-

79 ant to the said Scruggs, under the said original agreement with the said John W. Scruggs for his said improvements, upon his surrender of the same. It is stipulated that the amount that may be so ascertained to be due to the said Scruggs, by said arbitration, shall be a lien on said property to secure the payment of the same.

Defendant alleges that no such stipulation is contained in the said

original agreement with the said Scruggs, and that the acts of the said Wicks proposing to represent said defendant in thus attempting to create a lien upon the said specific real estate, to secure the payment of said prospective liability to the said Scruggs by the provisions of said contract of arbitration, was unauthorized on the part of the said Wicks; and that neither by vote, resolution, or any other corporative act did the defendant authorize, acquiesce in, or ratify the said action of the said Wicks, nor is it in any manner bound by the same.

Defendant further says that by his deed dated the first day of May, 1867, the said John W. Scruggs conveyed direct to the said Narcissa Scruggs, the complainant, who was then and is now *is* his wife, *and* his right, title, claim, and interest in and to the said property in the said town of Corinth mentioned in the said agreement between this defendant and her said husband, and sought to be ascertained and devisited by the said contract of arbitration entered into on the 24th day of February, 1871.

Defendant alleges that the said property is situated in the said State of Mississippi; that the said Narcissa, wife of the said J. W. Scruggs, holds the title to the said property under and by virtue of the State in relation to the rights of married women and not otherwise; and
80 defendant alleges that neither by the common law nor under the said statutes had the said Narcissa the power to bind herself by the said agreement or arbitration, nor could she thus divest herself of the said property by the said agreement, as set forth in said bill, nor could her title to the same be divested by the said award of the said arbitration, nor could she be forced to convey her said property to the said defendant by the decree of said arbitration, nor in any other manner divest herself or be divested by others of her title to said property save in the form specified in the statutes of Mississippi in relation to the conveyance of their property by married women; and defendant alleges that the form and ceremony required by the said statutes was not pursued by the said Narcisssa, in reference to her said property, in the said proceedings of arbitration, and that the same were and are to her utterly null and void, in this, that the said articles of submission were not acknowledged by the said John W. Scruggs, and for other causes appearing on the face of the same.

Defendant further says that the said Narcissa Scruggs, wife of the said John W. Scruggs, did not sign and become a party to said contract of arbitration, but that her name was signed thereto by one J. W. Scruggs in the following form, "Narcissa Scruggs, by J. W. Scruggs."

Defendant alleges that if the said J. W. Scruggs was John W. Scruggs, the husband of said Narcissa, that as such he had no power thus to bind his said wife to the said contract of arbitration, and thereby to divest her of her said property, nor does he profess in his said signature to sign her name either as husband, agent, or any other representative
81 character; wherefore the said contract of arbitration was null and void as to the said Narcissa.

Defendant alleges that the decree of the said arbitration, "that the said Narcissa Scruggs shall deliver the possession of the said property to the said railroad company upon payment of the said company to her of the amount of money awarded against them," was and is, for the reason and facts above set forth, beyond the power of the said arbitration of this court to enforce against the wishes and discretion of the said Narcissa, and is no consideration for the payment of the money by the defendant decreed against it by the said arbitrators, and now sought to be enforced and collected by decree of the court under the prayer of

the bill in this cause. Defendant then alleges that neither in the said contract or arbitration nor in the said award is there any mutuality of obligation that the said Narcissa Scruggs, as wife of the said John W. Scruggs, was not bound by the said agreement of arbitration that she could not be forced to perform that which was awarded against her, and which was the consideration for the payment of the money awarded to be paid by the defendant; that the said contract and award was all on one side as against the defendant, leaving the said Narcissa at her will and discretion to accept or reject the award when made dependent upon its satisfactory or unsatisfactory result to herself. Defendant further alleges that the said arbitration did not make their said award strictly in pursuance to, and in conformity with, the said contract of submission, in this:

1st. That they failed to include in said award matters included in said submission. Said submission requires that upon *of* whatever sum of money may be awarded against the defendants the said parties of
82 the second part (the said Scruggs and wife) shall execute and deliver to defendants a quitclaim deed conveying all their interest in said property. Defendedant alleges that although the said award does require the defendant to pay to said Narcissa Scruggs a large sum of money, it does not require of the said Narcissa and her husband to execute and deliver to defendants a quitclaim deed of all their interest in the said property, but only requires her, the said Narcissa, to deliver the possession of said hotel to the defendant.

2nd. Defendant alleges that the said award is not strictly in pursuance of, and in conformity with, said contract of submission, but is in violation of the direct and express provisions and stipulations thereof, in this: Said contract of submission stipulates as follows: It is distinctly agreed that only the questions of the legal constructions of said instrument as to the value of the improvements and the amount which shall be paid are submitted to said arbitrators, and all others arising under said agreement, whether as to the right of the parties to procure damages, or otherwise, are hereby expressly reserved. Yet the said award is not confined to the legal construction of said original agreement between John W. Scruggs and the defendant as to the value of the improvements, but does comprise and include the decision of various other questions arising under said agreement in regard to damages, or otherwise, so expressly and distinctly reserved. 1st. It does decide and decree the general character of the said original agreement between said John W. Scruggs and defendant in regard to its duration or limitation, as follows: "We do further decide and decree that the true construction of said contract is that by its terms John W. Scruggs acquired a perpetual lease on the grounds occupied by the said hotel."

83 The said award further decides and decrees the condition upon which only the said parties can respectively terminate said lease under the terms of said agreement, as follows: "We do further decide and decree that the true construction of the contract is that by its terms it (the perpetual lease) is subject to be defeated by the Memphis and Charleston Railroad Company only on the condition that Scruggs fail to keep a first-rate eating-house, and by the said Scruggs on the condition that said Memphis and Charleston Railroad Company fail to use said hotel as an eating-house." Wherefore defendant says that the said award is void, both upon the general principal applicable to awards and by the express and distinct stipulation of the parties.

Defendant alleges that the said decision and decree of the award in regard to the character of said original agreement, and as to the condi-

tions upon which only it could be terminable by the respective parties, is a mistake of the said arbitration, erroneous upon the face of the same, most disastrous to the rights and interest of the defendant under said agreement.

Defendant alleges that on its face the said agreement secures to it the right to decide for itself, and finally whether Scruggs *keep* a first-rate eating-house satisfactory to said company, and upon such decision to terminate the said contract. Defendant says that on its face the right of said Scruggs to terminate said contract on his part does not depend upon the failure of the company to use said hotel as an eating-house in any manner whatever, as decided and decreed by said award, but his said right by said contract depends upon different conditions altogether, as specified in said contract: "Said contract declares that
in case the said parties (Scruggs) becomes dissatisfied with the
84 schedule of the road or its management, then he has the right to
give up said improvements and require said company to pay him their value at the time of such surrender." Defendant alleges that said award, in its decision and decree in regard to the character of said lease, and as to the condition upon which its termination by the respective parties *as* made to depend (apart from these special provisions in the contract), is made more palpably erroneous by the general provisions of said contract, that this agreement is to be binding on both parties as long as mutually agreeable. Wherefore defendant says that the decision and decree of said arbitration in regard to the character of said lease as to its duration and as to the conditions upon which its termination is made to depend by the respective parties to the said contract, is palpably an error, a mistake, and a wrong upon its face, and should not be enforced or recognized as valid upon said parties in any court of law or equity.

Defendant further says that the question submitted by the said agreement to the said arbitration was the legal meaning on its face as between the said defendant, as lessor, and the said John W. Scruggs, as lessee, of the true value of the improvements, as applied to the building erected by the said Scruggs upon the land of the defendant under the original contract between them, as set forth in said bill. And the defendant alleges that in determining the legal construction of the said terms, said arbitrators adopted a rule, a principle, or standard, which is palpably wrong, illegal, and erroneous, as against the defendant.

Defendant alleges that the said arbitration admitted testimony to show what was the difference in the con*con*dition and value of the land
upon which said hotel was erected at the date of the building of
85 said hotel, and at the date of said arbitration of the increase of
population and the general increase of business in the said town of Corinth since the said improvement' were made, of the increased value of said improvements and location for the purpose of a hotel, and of the amount of money realized by said Scruggs by keeping of said hotel, and of the worth of the annual rent of said hotel, as shown by the price offered to the said Scruggs by other persons desiring to obtain the same, together with the admission of the proof of other facts, as distinct from the original cost of the said improvements to the said Scruggs, deducting for the length of time that the same had been in this occupation, as indication of their reasonable depreciation and decay, and as distinct from what would have been the cost of erecting new buildings identical and in every respect with those then on the premises and on the same spot, deducting therefrom such an amount as was proved to have been reasonable, for the w'are and t'are of said old buildings.

Defendant alleges that said arbitrators that the principal or legal rule to be applied in giving a construction of the said terms, value of the property, and the real construction of said contract, was to compound, in their estimation of the value of said building and of the amount to be paid by the defendant, all the above elements and sources of value above specified, as distinct from their abstract cost, and that said arbitration did make the said rule the principal of their decission, and did compound in their estimate of said value and of the amount to be paid by the defendant all of the said estimate of value above specified, to the great injury and damage of the defendant. And defendant alleges that the construction thus given to the said contract was not the true and legal construction of said instrument.

86 And defendant alleges that the legal and proper construction of said contract was that the said defendant should pay to the said Scruggs the original cost for the erection of said hotel building, less the amount to be deducted for the wear and tear of the same incident to their use and occupation up *up* to the time of their surrender by the said Scruggs, or that the amount to be paid to the said Scruggs was the sum of money that it would cost to erect new buildings and improvements identical in every respect to those on the premises and on the same spot at the time of the surrender, less the amount to be deducted therefrom for the wear and tear incident to the use and occupation for the number of years that the buildings thereon, the premises, had been so occupied by the said Scruggs. And the defendant alleges that the said mistake, error, and wrong, on the part of said arbitrators, is apparent upon the face of their said award, the testimony taken by them, and the proceedings in regard to said arbitration. And defendant alleges that the said arbitrators intended to decide the said question according to law, and not by their arbitrary judgment and discretion, but mistook the same, as appears on the face of said submission, award, and proceedings connected therewith, and to the great wrong and injury of defendant on the amount awarded against the defendant based thereon.

Defendant further alleges that the articles of submission upon which said award is based was not made a rule of court previous to said arbitration and award, in compliance with the requirements of the statutes of Mississippi upon the subject, is void as a statutary award, and cannot be made and intended as a decree of this court, as prayed by complainants' bill.

Defendant denies that the complainant offered in all things to comply with said decree and award and with said contract of submission, as alleged in said bill.

87 Defendant further alleges that the valuation of said property by said arbitration under said contract, as shown by the proof embodied in said award, is grossly excessive and improper, and the assistance of this court of equity ought to be withheld in an effort of complainant specifically to enforce the same.

Defendant alleges that the said Scruggs is indebted in the sum of dollars for the rent of said property, under the said contract of lease, as set forth in said bill, a statement of which is attached to this answer marked Exhibit A.

Defendant alleges that the said rent was not a matter of difference between it and the said Scruggs; that no proof was introduced or issue made upon the same before said arbitration. Nor is it in any way included or considered in the am't awarded to be paid by the defendant;

but it was agreed that the same should be settled between the said parties after the making of the award.

Defendant alleges that the said amount of rent and interest is a just and proper deduction from any amount that may be determined to be due by the defendant under the award made in reference to the said contract, and asks that it may be allowed.

Defendant further alleges that it has been notified by Milton Harris, who is the assignee in bankruptcy of the said John W. Scruggs, and as such assignee that he claims of this defendant whatever may be due by it under the said contract of lease or award of arbitration, and notifies the said defendant not to pay it to any other person but himself, the amount that may be ascertained to be due under the said award or contract of lease as aforesaid, and the defendant here brings the said notification to the notice of the court and asks that the court may
88 issue such process or take such other proceedings as may be deemed necessary to determine the rights of the said assignee, and to secure the defendant against the conflicting claims of the said complainants and the said assignee.

Defendant further alleges that it has been notified by W. F. Dowd, esq., and by W. H. Kilpatrick, esq., that they claim a lien on any amount that may be proved due by the defendant to complainant, as the attorneys of said complainant, separately retained in the said matter of arbitration, the said Dowd to the amount of three thousand one hundred and sixty-six dollars, 3,166$, and the said Kilpatrick to the amount of . And the said parties have notified the defendants not to pay to the said complainants the said amounts specified, being the amounts of their fees as attorneys for complainants as aforesaid.

Defendant brings these facts to the notice of the court and asks that such process may issue and such proceedings be had between the said parties and the said complainants as may secure the defendants between the conflicting claims of complainant and the said attorneys. And the defendant further says that the matter and things in said bill alleged are not of equitable cognizance, and are not within the equitable jurisdiction of this court, but are only cognizable, if at all, in a court at law.

And defendant now prays to be dismissed with his cost.

W. M. INGE,
ELLIOTT & PHELAN,
Sol's for Deft.

The said answer is here authenticated by fixing the common seal of the said corporation, by order of the president.

M. J. WICKS,
Prest. Mem. & Chas. R. R. Co.

Attest: G. W. ROBINSON, *Sec'ty.*

89 *Notice to produce books and papers.*

N. & J. W. SCRUGGS
v.
M. & C. R. R. Co.

The defendant and its solicitors will take notice that they are required by the complainants in this case to have before the honorable chancery court for the county aforesaid, on the 22d day of November, 1871, the minute-book of said defendant, containing all the proceedings had and

the resolutions passed by the directors of said railroad company, at a meeting had in the city of Huntsville, State of Alabama, on Wednesday, Jan'y 25th, 1871, which in anywise relates to or concerns the railroad hotel at Corinth, Miss., commonly called the Scruggs House, or relates to or concerns John W. Scruggs or his wife, Narcissa Scruggs, there to be used and given in evidence by the said complainants, or in default thereof the said complainants other and secondary proof of the contents of said book.

SALE & DOWD,
KILPATRICK & WHITFIELD,
Sol's for Compl't.

Received Nov. 14th, 1871, & executed the same day by personal service on J. P. Collier, agent of said company, & delivering to him a true copy of this writ.

E. F. HAYNIE, *Sh'ff.*

Statement of Col. Inge.

Col. W. M. Inge, a witness in behalf of complainant, states that he was present at the office of defendant, at Memphis, Tennessee, and saw the articles of submission, marked Exhibit B to the bill and copied in the award of arbitrators and the original of which is on file with the papers, executed by Moses J. Wicks, president of the Memphis &
90 Charleston Railroad. Witness is the regular retained counsel for said road, and has been for several years, and was present at the office of said company at the time said agreement for submission was executed. Witness was present with said Wicks as one of the counsel for said company, & with Col. Phelan & others as counsel for the same at the request of said Moses J. Wicks, before the arbitration, and took part as said counsel in the trial of said cause, at the Scrugg House, in Corinth, Mississippi, and that he saw said arbitrators Brickell, Reynolds, and Pledge, sign and execute said award or report marked Exhibit C to the bill and filed with the papers, and that the application for appeal was signed by the counsel for said company.

W. M. INGE.

It is agreed by counsel of complainant and defendant that the foregoing statement shall be read and received in evidence as a deposition duly taken according to law, in the case now pending in the chancery court of Alcorn County, State of Mississippi, wherein J. W. & N. Scruggs is complainant, & the Memphis & Charleston Railroad Company is defendant.

November 23d, 1871.

Sol. for Defendant.

SALE & DOWD,
KILPATRICK & WHITFIELD,
Sols. for Complainant.

W. M. INGE,
Sol. for Def't.

Deposition of S. R. Cruse.—Filed Oct. 18, 1871.—R. J. Fleming, clerk.

NARCISSA SCRUGGS
v.
MEMPHIS & C. R. R. Co.

91 The State of Mississippi to R. D. Wilson, justice of the peace, Huntsville, Ala., greeting.

Know you that we in confidence of your prudence and fidelity have appointed you, and do by these presents give unto you full power and authority diligently to examine S. R. Cruse, a witness in behalf of the complainant, upon the annexed interrogations, to be read as evidence in the suit now pending and undetermined in the court of chancery of Alcorn, State aforesaid, wherein Narcissa Scruggs et al. are complainants, and the Memphis and Charleston Railroad Company is defendant, and having first inserted your name in the direction of this writ, you do cause the said witness aforesaid to be and personally appear before you at such time and place as you may designate, and then and there examine him on his corporal oath or affirmation first taken before you, & that you take such examination & reduce the same to writing, and when you shall have taken said examination, you are to certify to the same under you hand and seal unto our said court of chancery, together with said interrogatories.

Witness R. J. Fleming, clerk of said chancery court, with the seal of said office at office Corinth, Miss., this the 12th of September, A. D. 1871.

R. J. FLEMING, *Clerk.*

Interrogatories to be proposed to S. R. Cruse, a witness residing in Huntsville, Madison County, Alabama, and to George Robertson, a witness residing at Memphis, Shelby County, Tennessee, the

92 answers to which, when taken, will be read as evidence on behalf of complainant, in a certain cause now pending in the chancery court of Alcorn County, State of Mississippi, wherein Narcissa Scruggs and John W. Scruggs are complainants, and the Memphis and Charleston Railroad Company are defendant to be propounded to each witness.

Interrogatory 1st, by complainant. Do you know the parties to this suit?

Interrogatory 2d, by same. What position, if any, do you or either of you hold in the employment of defendants? And as such agent or employee, are you or not the custodian of the secretarie's books, or of the records of the minutes of the board of directors of the Memphis and Charleston Railroad Company?

Int. 3rd, by same. If in your answer to the 2d interrogatory above propounded you stated that you are the custodian of said secretary's books or records of the minutes of said board of directors, will you or either of you please append to your answer to this interrogatory a true copy of the original proceedings of the board of directors of Memphis and Charleston Railroad Company, in reference to the surrender of the Scruggs House at Corinth, Mississippi, to said company?

Int. 4th, by same. If in answer to the 3d interrogatory above stated, you stated that there was no memorandum in writing or written record of the actions of said board of directors in relation to the surrender of the Scruggs House to said company, state what was the action of said board of directors in regard to the matter of the surrender of said hotel to said company in answer to this interrogatory?

93 **Int. 5th, by same. If either of you know anything farther that would benefit the complainant in this cause, please state the same fully as if particularly interrogated thereunto.**

W. F. DOWD,
F. E. WHITFIELD, JR.,
W. H. KILPATRICK,
Sol. for Compl't.

STATE OF MISSISSIPPI,
Alcorn County:

I have this day been duly served, according to law, with a copy of these interrogatories to which this is appended, this the 3d day of August, A. D. 1871.

W. M. INGE,
Att'y for M. & C. R. R. Co.

(Endorsed on back:)
Filed August 4, 1871.

R. J. FLEMING, *Clerk*,
By W. H. DODSON, *D. C.*

STATE OF MISSISSIPPI,
Alcorn County:

I, R. J. Fleming, clerk of the chancery court of said county, hereby certify that the preceding three pages contain a full and true copy of the commission to take deposition of the interrogatories in the cause therein named as the same remains on file in my office.

Given under my hand and the seal of said court at Corinth, this the 11th day of September, A. D. 1871.

R. J. FLEMING, *Clerk.*

94 NARCISSA SCRUGGS
v.
MEMPHIS & CHARLESTON RAILROAD COMPANY.

The deposition of S. R. Cruse, taken on the 16th day of October, 1871, at the office of the Memphis and Charleston Railroad Company, in Huntsville, Alabama, to be read in evidence on behalf of the plaintiff, in an action between the said Narcissa Scruggs, plaintiff, and the said Memphis and Charleston Railroad Company, defendants, pending in a suit now pending and undetermined in the court of chancery in the county of Alcorn, State of Mississippi, wherein Narcissa Scruggs et al. are complainants and the Memphis & Charleston Railroad Company is defendant.

S. R. CRUSE, the witness named as aforesaid, being first duly sworn, deposes and says to the interrogatories (four in number) propounded to him as follows:

To the 1st interrogatory he answers: I do.

To the 2d interrogatory he answers: I am the secretary and treasurer of the Memphis and Charleston Railroad, eastern division, and am custodian of the minutes of the board of directors of said company.

To the 3rd interrogatory he answers: That the following is a true copy from the minutes of the board, to wit:

HUNTSVILLE, ALA.,
Wednesday, Jan'y 25th, 1871.

A communication from John W. Scruggs, in reference to surrendering the Corinth Hotel to this company, at valuation according to the terms of the contract of July the 7th, 1857, was received, and on motion it was—

Resolved, That the president is hereby authorized to receive the hotel at valuation, as provided for by said contract, unless before
95 doing so he may deem it advisable again to consult this board.

To the 4th interrogatory he says: That he has answered fully in his answer to the third.

To the 5th interrogatory he says: That he knows nothing.

S. R. CRUISE,
Treasurer M. & C. R. R. Co., E. D.

STATE OF ALABAMA,
Madison County:

The foregoing deposition of S. R. Cruise was taken before me, as stated in the caption, and reduced to writing by the witness; and I further certify that I am not interested in this cause, nor of kin or counsel to either of the parties to the suit.

Given under my hand this the 16th day of October, 1871.

R. D. WILSON, *J. P.* [SEAL.]

Fees $10, paid by plaintiff.

Final decree.—Filed January 22d, 1872.

N. SCRUGGS
v.
M. & C. R. R. Co. } 97.

Be it remembered that this cause came on for final hearing, and was heard before the Hon. O. H. Whitfield, chancellor, presiding at the November term, 1871, of said court, at the court-house in the town of Corinth, on the day of November, being a day of said term, on bill, answer, & the exhibits & proof, in the cause, and after argument of counsel, the court not being fully advised, and order and decree among other things, that said cause be submitted for further consideration in vacation, and the decree be entered at the next term, as of last term of the court, and being now fully advised and it appearing to the satisfaction of the court that the material allegation of the bill *are* true;
96 that, on the 7th day of July, 1857, John W. Scruggs made and entered into a contract with the Memphis and Charleston Railroad Company, by the terms of which it is provided that John W. Scruggs might build on the ground of said company, at Corinth, Mississippi, embracing an acre of land, and bounded on the west by the Mobile and Ohio Railroad, and on the north by the Memphis & Charleston Railroad, and now embraced in and bounded by the following enclosures, out-building, and improvements, with hotel, commonly called and generally known as the Scruggs House, in said town of Corinth, then in Tishomingo and now in said Alcorn County, that this hotel should be used as an eating-house for said road; that Scruggs should furnish the money to pay for said building and other improvements; to pay an annual ground rent of two hundred and fifty dollars for the use of the ground occupied by said improvements, which were to be built according to the plans and specifications of the general superin-

tendent of the company. He bound himself to feed all the officers and employees at customary rates.

It was further provided that he should keep a first rate eating-house, satisfactory to the company; that if the company became dissatisfied with the eating-house kept, they retain the right to pay Scruggs the value of said improvements at the time and take possession of the property; and if Scruggs became dissatisfied with the management of the road, he might surrender the improvements and require payment. In either contingency the property to be valued by disinterested parties.

It is conceeded by the pleading and by the proof in the cause
97 that John W. Scruggs conveyed all his right acquired by said contract to his wife, Narcissa Scruggs, the complainant, and that she is sole owner thereof, and since his death is the sole complainant.

It is conceeded that said agreement was fully executed on both sides, and the hotel, &c., was erected by Scruggs, who continued to enjoy the use and possession of the property without any know' dissatisfaction from the company.

On the 7th of January, 1871, as it appears from their minutes, the board of directors of the company received a communication from John W. Scruggs proposing to surrender the property, or in reference thereto, and that they passed a resolution instructing Moses J. Wicks, the president of the company, to receive the surrender of the property, as provided by the contract. It further appears that on the 24th day of Feb'y, 1871, the parties, by their counsel, met at the office or place of business of the company at Memphis, Tennessee, and made a contract submitting the matter in dispute between them to the arbitrament and award of Robert C. Brickell, Reuben O. Reynolds, & F. L. Pledge, ref*f*erees, mutually chosen. This agreement of submission recites the original contract, and provides that, according to the terms of said original contract, it has become agreeable to both parties that the property shall be surrendered on the payment of its value, and that the parties differed as to the construction of the original agreement and the amount due by the company for the value of the property, and that it is therefore agreed that the construction of said agreement and the amount of the value of said property to be paid on its surrender is hereby submitted to the award of said arbitrators; that the amount so fixed shall
98 be a lien on said property; and that on its payment by said company the property shall be surrendered by said complainant and a quitclaim deed executed.

On the 21st day of April, 1871, the parties met by themselves and officers and counsel before the ref*f*erees at Corinth, Mississippi, and after hearing the evidence and arguments of counsel, and being fully satisfied, said ref*f*erees did award and decree that by the terms of the original contract said John W. Scruggs did acquire the right to use & possess said property on compliance with the conditions and stipulations set forth in said contract, which is made an exhibit to the bill, and which will more fully appear by ref*f*erence to the written award of said ref*f*erees, and they did further award that said defendant, the Memphis and Charleston Railroad Company, should pay to the complainants the sum of thirty-one thousand six hundred and sixty-six $\frac{66}{100}$ dollars, and that that sum from the evidence and the contract and articles of submission was the value of the property and all the improvements to which said complainant was entitled. It further appearing to the satisfaction of the court that the power to construe said original contract, and to fix the amount to be paid on the surrender of the property was fairly submitted to the award of said arbitrators, and the said questions were

fairly and fully determined without any misconduct or excess of power or any partiality ony their part, and that it was a tribunal chosen by the parties. That by the terms of the said several contracts and the said award that complainant is entitled to have the same specifically performed, and that she is entitled to a lien for amount of said award
99 enforced against said real estate described in the bill, and in the pleadings mentioned.

It is, therefore, ordered, adjudged, and decreed that said Memphis and Charleston Railroad Company, the defendants in this cause, shall, within thirty days from the date of this decree, pay to said complainant, Narcissa Scruggs, the sum of thirty-one thousand six hundred and sixty-six dollars and sixty-six cents, with interest from the 21st day of April, 1871, and that on payment of said sum of money she shall surrender possession of said property and appurtenances to said Memphis and Charleston Railroad Company, and shall deliver to them a quit-claim deed, surrendering and conveying all her right, title, claim, and interest. But if said defendant shall fail to pay the said sum of thirty-one thousand six hundred and sixty-six $\frac{66}{100}$ dollars, with interest, as herein provided, it shall be the duty of the clerk of this court, or any other lawful commissioner in chancery, to proceed as such commissioner to sell said property, to wit, one acre of land lying and being in the town of Corinth, Mississippi, at the crossings of the Memphis and Charleston Railroad with the Mobile & Ohio Railroad, and bounded on the west by said Mobile & Ohio Railroad, and on the north by said Memphis and Charleston Railroad, and on the south and east by fence or enclosure of said parcel of land, emb'dying the ground, the hotel situated thereon known as the Scruggs House, with all the buildings, improvements, and appurtenances thereunto belonging to the highest bidder for cash at the court-house door, in the town of Corinth, after giving at least thirty days' notice of the time and place of sale by publication in some newspaper published in said town, and shall make
100 to the purchaser or purchasers a deed to said property and appurtenances which shall vest all the right, title, claim, and interest of said defendant, the said Memphis & Charleston Railroad Company, in and to said property to said purchaser or purchasers, and in that event and for that purpose on the condition said sale shall become necessary, under the decree, all the right, title, claim, and interest of said defendant is hereby divested out of them and vested in said commissioner in chancery. And said commissioner shall appropriate the proceeds of the sale of said property, first to the payment of the amount of this decree and interest due to complainant, and the residue, if any, to said defendant, and he shall make his report to the next term of this court. It is further ordered that defendant pay the cost in this suit.

Ordered, adjudged, and decreed this 8th day of January, A. D. 1872.

O. H. WHITFIELD,
Chancellor.

Order of revivor.—Filed Nov. 23d, 1871.—R. J. Fleming, clerk.

N. SCRUGGS
v.
M. & C. R. R. Co.

Be it remembered that on this the 22d day of November, 1871, a day

of said term, the said Narcissa Scruggs came into court by her counsel and suggested the death of J. W. Scruggs since the last term of this court. And it appearing to the satisfaction of this court that said suggestion is true, and that said John W. Scruggs was only a formal party to the suit under the provisions of the statute, and that the entire interest is vested in said Narcissa Scruggs, it is therefore ordered that this suit abate as to said decedent, and that it be prosecuted in
101 the sole name of said Narcissa Scruggs.

O. H. WHITFIELD,
Chancellor.

Agreement of counsel.—Filed Nov. 24th, 1871.—R. J. Fleming, clerk.

N. SCRUGGS
v.
M. & C. R. R. Co.

In the above case it is agreed that the amount due to the defendant as ground rent for the land upon which the Corinth Hotel is built, as specified in the lease to J. W. Scruggs, was not included in the award by the arbitration; and it is agreed that the amount due for the same for said rent shall be deducted from whatever amount may be found to be due by the award of said arbitrators; and that the said Scruggs shall be permitted to sett off as against said rents, any amount due him by said railroad for board of employees, &c., the said amount to be adjusted by refferees to the master of the chancery court.

ELLIOTT & PHELAN,
W. M. INGE,
For Railroad.
SALE & DOWD,
Atty for Compl't.

Deed.—Filed in this cause, to be delivered only when the money awarded by the arbitration is paid. Nov. 24, 1871.—R. J. Fleming, clerk.

N. SCRUGGS
to
M. & C. R. R. Co.

This indenture, made this 22d day of November, 1871, between Narcissa Scruggs, party of the first part, and the Memphis and Charleston Railroad Company, of the second part, witnesseth, that for and in consideration of the sum of ten dollars, to her in hand paid by the party of the second part, the receipt of which is hereby acknowledged, the said party for herself, her heirs & assigns, hath bargained, sold, and conveyed, and by these presents doth bargain, sell, and convey unto the said
102 party of the second part, its successors and assigns forever, all the right, title, claim, and interest in that certain property known and described as the Scruggs House, in Corinth, Miss., situated and located at the railroad crossing in said city of Corinth, together with all and singular the hereditaments and appurtenances thereunto belonging or in any way appertaining, and all the estate, right, title, and interest, claim, or demand whatever of the said party of the first part either in law or equity of, in, and to the above bargained premises, and every part and parcel thereof; to have and to hold to the said party of the second part, its successors and assigns forever.

In testimony whereof the said party of the first part hath hereunto set her hand and seal on the day and year first above written.

N. SCRUGGS. [SEAL.]

STATE OF MISSISSIPPI,
Alcorn County:

This day personally appeared before me W. H. Dodson, an acting justice of the peace, in and for the county & State aforesaid, Mrs. N. Scruggs, who acknowledged that she signed, sealed, and delivered the foregoing conveyance for the purpose therein mentioned, as her act and deed, on the day and date thereof.

Given under my hand and seal this 24th day of November, A. D. 1871.

W. H. DODSON, *J. P.* [SEAL.]

THE STATE OF MISSISSIPPI,
Alcorn County:

In the chancery court of Alcorn County, State of Mississippi.

103 NARCISSA SCRUGGS, COMPL'T,
v.
M. & C. R. R. CO., DEFENDANT.

To R. J. Fleming, clerk of the chancery court of Alcorn County, State of Mississippi.

Your petitioner, the Memphis and Charleston Railroad Company, defendant in the above-entitled cause, would respectfully represent that, on the 8th day of January, A. D. 1872, a final decree was rendered in the above-entitled case, by the honorable O. H. Whitfield, chancellor of the 6th chancery district of the State of Mississippi, said chancellor having exchanged districts with the Hon. A. E. Reynolds, chancellor of the 8th chancery district of the State of Mississippi, said Reynolds being incompetent to hear and determine said cause, and said decree was entered up, as rendered of the November term, A. D. 1871, of said court, and the defendant beleiving that there are many and manifold errors in this proceeding and decree rendered therein, and beleiving itself aggreived and wronged, thereby prays an appeal to the next term of the supreme court of the State of Mississippi, to be holden in the city of Jackson in said State, on the 3d Monday of April, A. D. 1872, and that said appeal may operate as a supercedeas.

ELLETT & PHELAM, & W. M. INGE,
Sol's for Defendants.

Filed M'ch 8th, 1872.

R. J. FLEMING, *Clerk.*

NARCISSA SCRUGGS, COMPLAINANT,
vs.
MEMPHIS & C. R. R. CO., DEFENDANTS.

104 Know all men by these presents that we, the Memphis and Charleston Railroad Company, principal, and Geo. P. Hamerly, R. W. Price, J. M. Nelson, A. R. Wiggs, and D. E. Coleman, securities, are held and firmly bound unto Narcissa Scruggs, in the sum of forty thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and

severally, firmly by these presents, this the 22d day of February, A. D. 1872. The condition of the above obligation is such, that whereas, in a case lately pending in the chancery court of Alcorn County, State of Mississippi, wherein Narcissa Scruggs was complainant, and the Memphis and Charleston Railroad Company defendants, a decree was rendered on the 8th day of January, A. D. 1872, which decree was entered as rendered of the November term, A. D. 1871, of said chancery court aforesaid, and the above bound Memphis and Charleston Railroad Company considering itself aggrieved thereby, prayed for and obtained an appeal therefrom, from the clerk of the chancery court of Alcorn County, State of Mississippi, in vacation, on the 27th day of February, A. D. 1872, returnable to the next term of the supreme court of the State of Mississippi, to be holden in the city of Jackson, State of Mississippi, on the third (3d) Monday in April, A. D. 1872, said appeal to operate as a supersedeas:

Now, therefore, if the appellant shall well and truly pay, satisfy, and perform the original decree, and also such final decree as the supreme court may render, and all the cost which has accrued, or may accrue, should such decree be affirmed, then this obligation to be null and void; otherwise to remain in full force and effect.

Witness our hands and seals the day and year first above written.

105

MEM. & CHA'LS. R. R. CO., [SEAL.]
By M. J. WICKS, *President.*
GEO. P. HAMERLY. [SEAL.]
R. W. PRICE. [SEAL.]
JOHN M. NELSON. [SEAL.]
A. R. WIGGS. [SEAL.]
D. E. COLEMAN. [SEAL.]

Test: G. W. ROBINSON, *Sec'y.*

Filed M'ch 18th, 1872.

R. J. FLEMING, *Clerk.*

STATE OF MISSISSIPPI,
Alcorn County:

Personally appeared this day before me, R. J. Fleming, clerk of the chancery court of said county, the securities whose names are signed to the foregoing bond, who, being severally sworn, depose and say that they are respectively seized and possessed in their own right, over and above all their just debts and liabilities, and not including property exempt by law from distress or execution, of a clear unencumbered estate, the said G. P. Hamerly of a value not less than dollars; the said R. W. Price of a value not less than twenty-five thousand dollars, 25,000$; the said J. M. Nelson of a valuation not less than five thousand dollars, 5,000$; the said A. R. Wiggs of a valuation not less than five thousand dollars, 5,000$, and the said D. E. Coleman of a value not less than five thousand dollars, 5,000$; and further they say not.

R. W. PRICE
J. M. NELSON.
A. R. WIGGS.
D. E. COLEMAN.

Sworn to and subscribed before me this 18th day of March, A. D. 1872.

R. J. FLEMING, *Clerk.*

I approve the above bond and security, March 18th, 1872.

R. J. FLEMING, *Clerk.*

106 The State of Mississippi to the sheriff of Alcorn County, greeting:

You are hereby commanded to summon Narcissa Scruggs that she be and appear before the supreme court on the 3rd Monday of April next, 1872, to answer a writ of error taken out by the Memphis and Charleston Railroad Company to reverse a decree rendered in the chancery court of Alcorn County, at the November term thereof, A. D. 1871, in a certain suit wherein Narcissa Scruggs was complainant, and said Memphis and Charleston Railroad Company was defendant. Herein fail not, and have then there this writ.

Witness the honorable chief justice of said supreme court, and the seal of said chancery court.

Issued the 19th day of March, A. D. 1872.

R. J. FLEMING.

Clerk of the Chancery Court of Alcorn County, Miss.

Mandate from the supreme court.

The State of Mississippi to the honorable the chancery court of Alcorn County, greeting:

Whereas, on the 14th day of December, 1874, the same being a day of the regular term of our supreme court, began and held at the court-room in the capitol, in the city of Jackson, in said State, on the 3rd Monday in October, in the year of our Lord 1874, the following final decree was rendered by our said supreme court, to wit:

MEMPHIS AND CHARLESTON R. R. CO.
vs.
NARCISSA SCRUGGS.

107 This cause having been submitted at a former term upon the record herein from the chancery court of Alcorn County, and this court having sufficiently examined and considered the same, and being of the opinion that there is no error therein, doth order, adjudge, and decree that the decree of said court rendered in this cause, on the 8th day of January, 1872, be, and the same is hereby, affirmed, and it is further ordered, adjudged, and decreed, that the appellee do have and recover of the appellant, and Geo. P. Hamerly, R. W. Price, John M. Nelson, A. R. Wiggs, and D. E. Coleman, sureties in the appeal bond, the sum of thirty-one thousand six hundred and sixty-six dollars and sixty-six cents ($31,666 $\frac{66}{100}$), the amount of the decree of the court below, together with the further sum of fifteen hundred and eighty-three and $\frac{33}{100}$ dollars, being damages at the rate of five per centum, as allowed by law, as well as interest, at the rate of six per cent. per annum on the amount of said decree from date of rendition thereof till paid, and also the cost of this cause in this court, and the court below expended, &c., to be taxed, &c.

You are therefore hereby commanded that such execution and further proceedings be had in said cause as according to right and justice, the judgment of our said supreme court, and the law of the land ought to be had.

Witness the honorable E. G. Peyton, chief justice of our supreme court. Also thes ignature of the clerk and seal of said court, hereto affixed at office at Jackson, this the 18th day of December, 1874.

A. W. LITTLE, *Clerk*,
By R. T. PEYTON, *D. C.*

108 STATE OF MISSISSIPPI,
Alcorn County:

I, Robert J. Fleming, clerk of the chancery cou't of Alcorn County, State aforesaid, do certify that the foregoing 191 pages contain a true and perfect transcript of the cause, lately pending in the chancery court of said county, wherein the Memphis and Charleston Railroad Company was complainant and Narcissa Scruggs was defendant, and the exhibits thereto, as the same remains on file and appears of record in my office.

Given under my hand and the seal of said chancery court, at office in Corinth, Miss., this the 22d day of June, A. D. 1875.

[SEAL.]

R. J. FLEMING, *Clerk*,
By W. D. PADEN, *D. C.*

109 *Exemplification.*

From page	1	to 15.	Bill of complaint.
	17	" 24.	Bond and p'r att'y of Hill et al.
	25	" 26.	Writ of injunction.
	27	" 58.	Answer of Narcissa Scruggs.
	59	" 64.	Petition to remove & bond for same.
	65	" 67.	Power of attorney from Brinckley to Poston.
		68.	Motion to remove, & motion to dissolve.
	69	" 71.	Answer to petition to remove.
	71	" 72.	Final decree.
			Exhibit referred to in bill & answer.
	73	" 131.	Bill and exhibits thereto.
	131	" 155.	Answer.
	155	" 156.	Notice to have books & papers.
	157	" 158.	Statement of Col. Inge.
	159	" 166.	Deposition of Cruise.
	167	" 177.	Final decree.
	177	" 178.	Death of J. W. Scruggs suggested.
	178 & 9.		Agreement of counsel.
	179	to 181.	Quit-claim deed.
	182	" 188.	Bond and citation.
	189	" 191.	Mandate of supreme court.

Filed June 25th, 1875.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 5th day of July, A. D. 1875, a motion was entered in said cause, which is in the words and figures following, to wit:

110 *Motion.*

MEMPHIS & CHARLESTON R. R. Co.
vs.
N. SCRUGG. } 215.

The defendant moves the court to remand this cause to the chancery court of Alcorn County, and dismiss the same from this docket.

1. Because this court has no jurisdiction.
2. Because the Memphis & Charleston Railroad Co. is a citizen of the State of Alabama, and N. Scruggs is a citizen of the same State, and are not citizens of different States.
3. Because R. W. Pierce, D. E. Coleman, & Jno. M. Nelson are citizens of the State of Mississippi, and the Memphis & Charleston R. R. Co. is a citizen of Miss. and of the same State.
4. For other reasons apparent from the face of the record & proceedings in said cause.

SALE & DAWD,
For Motion.

Filed & entered July 5, 1875.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the same day another motion was filed & entered in said cause, which is in the words & figures following, to wit:

Motion.

MEMPHIS & CHARLESTON R. R. Co.
v.
NARCISSA SCRUGGS. } 215.

The defendant moves the court to dissolve the injunction heretofore granted in this cause.

111 1. Because there is no equity on the face of the bill.
2. Because the answer denies all the material allegations of the bill.
3. Because all the questions raised and all the relief sought by the bill are res adjudicata, and are settled by the decision of the supreme court of Miss. in the case of Narcissa Scruggs vs. The Memphis & Ch. R. Road Co., which is made a part of the bill, answer, and pleadings in this cause.
4th. Because the rents claimed were adjudicated and settled by the decree of the chancery and supreme court.
5. Because the remedy, if any, of complainant is adequate and complete at law.
6. For other reasons apparent from the face of the record & proceedings.

SALE & DAWD,
Sol'r for Def't.

Filed & entered July 5th, 1875.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 6th day of July, 1875, an affidavit was made and filed in said cause, which is in the words following, to wit:

Affidavit.

In the district court of the United States for the northern district of Mississippi, June term, 1875.

MEMPHIS & CH. R. R. Co.
vs.
NARCISSA SCRUGGS ET AL.

This day personally appeared in open court Wm. F. Dawd, agent &

attorney for defendant, who made oath in due form of law that R. W. Price & D. C. Coleman, two of the said defendants, are citizens
112 of the county of Tishomingo and State of Mississippi, and are citizens of the same State with the Memphis & Charleston R. R. Co., the complainant, as affiant is informed and believes.

WM. F. DAWD.

Sworn to and subscribed before me this 6th day of July, 1875.

G. R. HILL, *Clerk.*

Filed July 6th, 1875.

G. R. HILL, *Clk.*

And afterwards, to wit, on the 7th day of July, 1875, the following further affidavits were filed in said cause, to wit:

Affidavit.

THE STATE OF ALABAMA,
Madison County:

Personally appeared before me, Joseph Martin, a notary public in and for said county & State, William W. Garth, who, being first duly sworn, deposes and says that he is a resident citizen of the city of Huntsville, Alabama, and has been such for a number of years; that he is acquainted with Mrs. Narcissa Scruggs, and was well acquainted with her husband John W. Scruggs during his lifetime; that since the late war the said John W. Scruggs was notoriously insolvent, and was adjudicated a bankrupt upon his own petition in 1868 for many hundred thousand dollars of indebtedness; that the only property he knows of the said Narcissa claiming, except the Corinth Hotel, is a tract of land of about sixty acres and the improvements thereon, situated in and adjoining said city of Huntsville, & the household & kitchen furniture; that he has this day examined the tax books of said county of Madison
113 for the year 1874, and find the above as the only property assessed to said Narcissa Scruggs, and by said assessment said real property is valued at $17,000 and said personalty at $1,640; that in the judgment of affiant, deducting the amount exempt from execution, which is $1,000 of personalty and $2,000 of realty, said property would not bring $12,000. Affiant further states that the above property, real and personal, was conveyed by said Jno. W. Scruggs to said Narcissa Scruggs in May, 1866; and that a suit is now pending in the chancery court of said county of Madison against said Narcissa to set aside and annul said deed of said John W. to her upon the ground that the same is fraudulent, null & void.

W. W. GARTH.

Sworn to & subscribed before me this 5th day of July, 1875. Witness my hand seal of office.

JOSEPH MARTIN,
Notary Public.

[Seal & stamp.]
Filed July 7th, 1875.

G. R. HILL, *Clerk.*

Affidavit.

STATE OF ALABAMA,
County of Madison:

Personally appeared before me, Joseph Martin, a notary public in

and for said county and State, George P. Beirne, known to me, who, being first duly sworn, deposes as follows: The undersigned states that he is acquainted with Narcissa Scruggs, the wife of John W. Scruggs, deceased, & was acquainted with said Scruggs in his lifetime. He has been & is a resident citizen of Huntsville, in the State of Alabama, for more than forty-five years. That Jno. W. Scruggs, at the date of his death, was entirely insolvent, and this affiant believes he was
114 insolvent on the 14 May, 1866, when he made a conveyance to his wife, the said Narcissa, of the real estate near the town of Huntsville, of about sixty acres of land, upon which is the dwelling-house occupied by the said Narcissa, and which has been valued on the tax-list of 1874, in the county of Madison & State of Ala., at 17,000 dollars, for which sum it cannot now be sold. There is also, on the same tax-list, personal property valued at 1,640 dollars. I know of no other property of said Narcissa, unless it be an interest cla'med in litigation between herself & the Memphis & Charleston Railroad property, know' as the Corinth Hotel, at Corinth, Mississippi. The undersigned further states that there is now pending in the chancery court, for the county of Madison & State of Alabama, a bill in chancery, wherein James Robinson, creditor of said J. Waddy Scruggs, is complainant, & J. Waddy Scruggs, & his wife Narcissa, & Frank Saunders, are defendants, seeking to subject the property so conveyed, as aforesaid, by said Scruggs to his wife, to payment of complainant's debt, & to cancel & annull said conveyance as fraudulent, null, & void.

GEO. P. BEIRNE.

Sworn to & subscribed before me, the 5th day of July, A. D. 1875. Witness my hand and seal of office.

JOSEPH MARTIN,
Notary Public.

[Seal & stamp.]

Filed July 7th, 1875.

G. R. HILL, *Clerk.*

Affidavit.

In the Federal court at Oxford, Miss.

M. & C. R. R. Co.
v.
NARCISSA SCRUGGS

115 D. H. Poston, on' of the attorneys for compt. in this cause, being first duly sworn, on oath says: The Memphis & Charleston Railroad Co., the compt. in this bill, has been notified, under & in pursuance of the law of this State, that the counsel for the deft. in this cause claims a lien upon the decree hereby enjoined, for services to the extent of somewhere near five thousand dollars, & that, in addition to this notice, said company has been garnisheed, at the instance of J. H. Viser, in this court, to hold, subject to the determination of this court, a sufficiency of the decree claimed to be due by complainant to the defendant, to satisfy his claim, amounting to about $6,000.00. This suit is yet undetermined, & to satisfy the same an attachment has also, & as he is informed since the institution of this suit, been levied upon the hotel property at Cornith, Miss.

D. H. POSTON.

Sub. & sworn to before me this the 7th day of July, 1875.

G. R. HILL, *Clerk.*

Filed July 7th, 1875.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 7th day of July, 1875, the same being a day of the June term of said court, 1875, the following order was made, to wit:

Order on motion to remand.

MEMPHIS & CHARLESTON RAILROAD CO. } 215.
v.
NARCISSA SCRUGGS. }

This cause came on this day to be heard, upon the motion of the defendant to remand the cause to the chancery court at Corinth, Miss., for the reason that the court had no jurisdiction of the same, & after
116 argument & due consideration, the court is pleased to & does overrule & disallow said motion, & orders that this cause stand on the docket to be disposed of as other causes in this court.

And afterwards, to wit, on the said 7th day of July, 1875, a motion was made and entered in said cause, which is in the words following, to wit:

Motion.

M. & C. R. R. Co. }
v.
NARCISSA SCRUGGS. }

Comes the comp't, the Mem. & Charleston Railroad Company, by its solicitors, & moves the court for the appointment of a receiver to take charge of & preserve the property in dispute, to wit, the hotel property at Corinth, Miss., during the continuance of this litigation, in the event the court should decree a dis'olation in whole or in part of the injunction herein.

HUMES & POSTON,
Sols. for Compts.

Filed & entered July 7, 1875.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 9th day of July, 1875, the same being a day of the June term of said court, in 1875, a decretal order was made in said cause, which is in the words and figures following, to wit:

Decretal order.

In the circuit court of the United States, northern district of Mississippi, at Oxford. June term, 1875.

MEMPHIS & CHARLESTON RAILROAD CO. }
vs.
NARCISSA SCRUGGS ET AL. }

117 Be it remembered that on this the 9th day of July, 1875, a day of said term, this case came on to be heard, and was heard

before the Hon. R. H. Hill, sole presiding judge, upon the motion of defendant to dis'olve the injunction heretofore granted in this cause on bill, answer, exhibits, &c. And it appearing to the satisfaction of the court that on the 8th day of January, 1872, the chancery court of Alcorn County rendered a final decree in favor of said Narcissa Scruggs, directing said Memphis and Charleston Railroad Company, among other things, to pay to Narcissa Scruggs the sum of thirty one thousand six hundred and sixty-six dollars and sixty-six cents, with interest at 6% per annum from the award of the arbitrators, on the 21st of April, 1871, until paid, and that said Memphis & Charleston Railroad Company prayed for and obtained an appeal to the supreme court of Mississippi, and executed an appeal bond as the law directs, with George P. Hammerly, R. W. Price, John M. Nelson, A. R. Wiggs, & D. E. Coleman; and on the 14' day of December, 1874, by the judgment and decree of said supreme , it was ordered that said decree of the chancery court of Alcorn County be in all things affirmed; and it was further ordered, adjudged, and decreed, that said appellee, Narcissa Scruggs, do have and recover of said appellant and its said sureties in the appeal bond the sum of thirty one thousand six hundred and sixty six $\frac{66}{100}$ dollars, with interest at 6%, as allowed by original decree of the chancery court, and the further sum of fifteen hundred and eighty-three $\frac{33}{100}$ dollars, which several sums with interest amount at this date in the aggregate to the sum of forty-one thousand three hundred and thirty six $\frac{99}{100}$ dol-

118 lars; and the parties appearing by their counsel, & after argument, the court being now fully advised, doth order, adjudge, and decree, that as to a portion of said sum, to wit, twenty thousand dollars, that the preliminary injunction heretofore granted be retained until the further order of this court; and as to the residue of said sum, to wit, the sum of twenty-one thousand three hundred and thirty six $\frac{99}{100}$ dollars, it is ordered that said injunction be dissolved and said motion sustained. It is further ordered, adjudged, and decreed, that said Memphis & Charleston Railroad Company pay to said Narcissa Scruggs, or Salto & Dewd, her solicitors of record, within twenty days from the date of this decretal order, the said sum of twenty one thousand three hundred and thirty-six $\frac{99}{100}$ dollars, with interest from this date; and if said Memphis & Charleston Railroad Company shall fail to pay said sum of money within twenty days from this date, the clerk of this court shall issue execution as at law against said Memphis & Charleston Railroad Company, and said sureties on said appeal bond, R. W. Price, John M. Nelson, A. R. Wiggs, & D. E. Coleman, and George P. Hammerly.

Ordered, adjudged, & decreed this 9th day of July, 1875.

R. A. HILL, *Judge.*

And afterwards, to wit, on the 17th day of July, 1875, a motion was made & entered in said cause in the words following, to wit:

Motion.

In circuit court of the United States at Oxford, Miss.

M. & C. R. R. Co.
vs.
NARCISSA SCRUGGS.

119 Came the Memphis & Charleston Railroad Company by its so-

licitors & enter a motion to reconsider the decree entered into at a former day of this term, modifying and partially dissolving the injunction herein, & moving also, upon refusal of the court to reinstate the injunction, that def't be compelled to give a proper refunding bond to cover the amount of the decree as to which the injunction was modified & dissolved.

Filed & entered July 17th, 1875.

G. R. HILL, *Clerk.*

And, to wit, on the same day a petition for rehearing was filed in said court, which is in the words and figures following, to wit:

Petition.

In the circuit court of the United States at Oxford, Miss.

MEMPHIS & CHARLESTON RAILROAD COMPANY
vs.
NARCISSA SCRUGGS.

To the Hon. R. A. Hill, judge of the United States court for the northern district of Mississippi at Oxford:

Complainant, the Memphis & Charleston Railroad Company, respectfully asks for a rehearing of the interlocutory decree entered at the present term of this court dissolving or modifying the injunction herein, & permitting defendant to collect $21,000.00 or thereabouts of the decree enjoined, & they respectfully ask that the injunction be either reinstated, or if that be refused, then that the defendant be required to give a refunding bond for the forthcoming of the sum collected, should the court on final hearing decree her not entitled thereto.

120 They assign the following grounds & reasons for such motion:

1st. The only proofs in the record show that the rental value of the property since 1871 was about $30,000.00, & the complainant, if on final hearing is deemed entitled to this sum, there would be no indemnity for the difference between this sum & the amount still enjoined, but the same $10,000 would be a clear loss, it being conceeded that defendant is involved.

2nd. The opinion of the court concedes the fact that $30,000 is the value of the rent as disclosed by the record, & that complainant was entitled to such rents; therefore we insist that the injunction should have been retained for at least that sum.

3d. That in addition to the $30,000.00 of rents above referred to, complainant claims 5,400.00 of rent due anterior to April, 1871, which by agreement of parties was reserved & acknowledged at that time & has never been settled or adjudicated. The court expresses some doubt as to this claim & its validity, & defendant being insolvent, the benefit of the doubt should have been given to complainant, & this injunction should have been retained for this amount also.

4th. The injunction should have been continued to the hearing, because the question of the power of complainant to make the original contract is for the first time made by the bill in this cause & has never been adjudicated, & if sustained & this court holds that complainant has no power to make the same, & that it is not precluded from so doing by the decree of the supreme court of Mississippi, then we submit that this is a question of pure law, & that the dissolution

121 should not be made until the final hearing, as the partial dissolution at this stage would work irretrievable ruin to complainant, while its continuance would do defendant no harm, she being amply secured & in possession of the property.

5th. That the decree & opinion of the supreme court of the State of Mississippi upon the award of the arbitrators could & did not embrace any other matters except such as were submitted to them, as the bill filed to make it a decree of the chancery court made no new issue & def'ts by their answers could make none. The decree or award could not be nor was it, attacked by the answer, & there being no cross-bill nor proper issue made on the defenses relied upon in the answer, the chancery court & supreme court of Mississippi had no authority to pass upon any questions except those referred to the arbitrators, & the balance of their decree & opinion in the case is a pure "dictum" not binding upon complainant or this honorable court, & complainant has the right to have settled & fully adjudicated by this court the question of "ultra vires" & other questions relied upon in the bill, & as these questions are vital to the case, & if decided in complaintant's favor would annul & vacate entirely the decree & fully release complainant therefrom, complainant insists that the injunction should be continued to the hearing.

6th. The injunction under the circumstances of the case should be continued in full force to the final hearing, as its unqualified dissolution in whole or in part is virtually an end of the case to the extent of
122 its dissolution, as defendant is totally insolvent & her reception of the money would be a total loss to complainant, even if on final hearing the court should be of opinion & so decree that complainant is entitled to the full relief prayed for by it.

7th. That the matter of dissolution being purely a matter of discretion, the court should not use it to the injury and irreparable loss of complainant, when the defendant by the delay is only inconvenienced & has ample security if ultimately successful. In no event should the dissolution be allowed, except upon a refunding bond being given with ample security.

For all of these & other good and sufficient reason to be assigned at the hearing it asks a suspension of the decree of dissolution & that your honor will reinstate the injunction, or if it should be dissolved to any extent, that to cover the amount so released a refunding bond be required of defendant to be given before the dissolution becomes effectual.

Comp't prays for this relief as absolutely necessary to the attainment of justice.

HUMES & PASTON,
Sols. for Comp'ts.

Filed July 17, 1875.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 19th day of July, 1875, an affidavit was filed in said cause, which is in the words & figures following, to wit:

Affidavit.

STATE OF MISSISSIPPI,
Alcorn County:

123 This day personally appeared before me, a justice of the peace in & for said county, Thomas P. Young, sen., who made oath

that he has been a resident of Corinth for about five years, and has been familiar with the Corinth Hotel, formerly called the Scruggs House, in Corinth. If the house were well furnished and the Mobile & Ohio Railroad Co. and the Memphis & Charleston R. R. Co. would use it as an eating house for passengers and employees, the property would be valuable and bring a large rental. But after the 21st of April, 1871, when the arbitrators made their award, and after the suit began between Mrs. Scruggs and the Memphis & Charleston Railroad Co., that company ceased to use it as an eating-house, and the Mobile & Ohio R. R. Co. only used it for a short time as a dinner stand for one of the trains. Thomas P. Young, jr., rented said hotel from the 1st day of Jan'y, 1874, for $300 per month, with the use of the kitchen, dining-room, bar-room, and bedroom furniture, &c., &c. That he lost money at that; that he is now renting the furniture & hotel (the furniture belonging to private parties) for two thousand dollars per annum, which he thinks a full price. Without the furniture and the patronage of the two railroads, and taking into consideration the fact that the Memphis & Charleston R. R. Co. may at any time take possession, the hotel is not worth more for annual rent than eighteen hundred dollars ($1,800) per year, and affiant considers that eighteen hundred dollars per year would be a big price for it. Affiant has been in the said hotel & keeping the books
124 of the same, managing it for the said Thos. P. Young, jr., all the time since he first rented it.

THOS. D. YOUNG, SR.

Sworn to & subscribed before me July 17th, 1875.

J. C. SKILLMAN,
Clerk Circuit Court Alcorn County, Miss.

Filed July 19th, 1875.

G. R. HILL, *Clk.*

And again, to wit, on the 20th day of July, 1875, another affidavit was filed in said cause, which is in the words & figures following, to wit:

Affidavit.

STATE OF ALABAMA,
Madison County:

This day personally appeared before me, William B. Leedy, a notary public in & for said county & State, Mrs. Narcissa Scruggs and E. R. Matthews, her agent, who made oath that after the award of the arbitrators in the case of the Memphis and Charleston Railroad Co. and said Narcissa Scruggs, she offered to surrender and has ever since been anxious to surrender the property in dispute now known as the Corinth Hotel, on the payment to her of the amount due her by the award; that she did not want the property, but the money due her; that she was advised that after a decree of specific performance she would not be liable for the rents; that she has not occupied the premises, but though her agent, E. R. Matthews, has used every effort to take care of the property and make it bring as much rent as possible; that for the first year after the award of said arbitrators the hotel was rented to one Louis Chapman for the sum of $500.00 per month; that only $500.00 of this sum was
125 paid when he became a bankrupt. Mrs. Narcissa Scruggs had retained a lien on the furniture which she had sold to said Chapman, and after many vexations & delays the sum of five hundred &

sixty-nine $\frac{55}{100}$ dollars was realized by her counsel, Sale & Dowd. Chapman was turned out of possession, and the hotel & furniture which had been replaced by E. R. Matthews, as her agent, was rented to one J. E. Gillenwaters, then deemed solvent, and for the best price that could be obtained. Every exertion was made to collect all of the rent, and the sum of thirty-nine hundred dollars was realized. Said Gillenwaters became insolvent the next year, 1873. The said hotel was rented, together with all the household, kitchen, dining, bar-room, and other furniture, all of which was the property of Mrs. Narcissa Scruggs, to one T. P. Young, jr., at the rate of three hundred dollars p'r month, until the sale of the furniture, when the hotel was rented for the year 1875 at the rate of $2,000.00 per annum. A statement of the whole amount of rent collected since said award of the arbitrators on the 21st of April, 1871, is herewith filed as a part of this affidavit.

Affiants further state that if affiant had withdrawn all her furniture and fixtures from said hotel it could have been rented with great difficulty, if at all. That even since the award of said arbitrators, the Memphis & Charleston Railroad Co. has refused said hotel as an eating-house; that for a while the Mobile & Ohio Railroad only used it for one meal a day, and then stopped, as affiants have good reason to believe,
126 through influence of said Memphis & Charleston R. R. Co. That the main value of the property is dependent on the patronage of these two roads, which being withdrawn leaves it difficult to rent for any sum to a good tenant, especially without any furniture.

NARCISSA SCRUGGS.
E. R. MATTHEWS.

Sworn to & subscribed this the 19 day of July, 1875.

W. B. LEEDY,
Notary Public.

[87 & stamp.]

Filed July 20th, 1875.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 21st day of July, 1875, the same being a day of the June term of said court, 1875, the following order was made in said cause, to wit:

Order.

M. & C. R. R. Co.
v.
NARCISSA SCRUGGS.

In this cause this day is suggested that on the margin of the bill on page 8 of the transcript in this cause are the words "if the money should be paid," which are improperly copied, & are no part of the bill as filed, & such fact being admitted by def't's counsel to be true, on motion of comp't the court orders that the said words be by the clerk of this court stricken from the record.

Ordered this 21st July, 1875.

R. A. HILL, *Judge.*

And, to-wit, on the same day, the following agreement was made and entered in said cause, to wit:

127 *Agreement.*

M. & C. R. R. Co.
v.
NARCISSA SCRUGGS. } 215.

In this cause the Hon. R. A. Hill, judge presiding, this day suggested to the parties hereto that he was incompetent to hear & determine this cause by reason of the fact that he was a stockholder in the Memphis & Charleston R. R. Co., the complainant, & that his incompetency existed at the date of the filing of the record in this cause; & such incompetency being made known, both parties, by their solicitors, waived the incompetency of said judge & agreed that such waiver should be entered *nunc pro tunc* so as to include all decrees that have been heretofore or may hereafter be made in this cause & such decrees shall be binding upon the parties to the same extent & in the same manner as if no such incompetency in fact ever existed.

Ordered this 21st July, 1875.

R. A. HILL, *Judge.*

And afterwards, to wit, on the 22 day of July, 1875, a motion was entered in said cause, which is in the words following, viz:

Motion.

M. & C. R. R. Co.
v.
NARCISSA SCRUGGS.

Came the Memphis & Charleston R. R. Company, the comp't, & moves the court for the appointment of a receiver in this cause to take charge of & protect the property until the final hearing.

HUMES & PASTON,
Sols. for Comp'ts.

Filed & entered July 22, 1875.

G. R. HILL, *Clerk.*

128 And, to wit, on the same day, the following further motion was made & entered in said cause, to wit:

Motion.

MEMPHIS & CH. R. R. Co.
v.
N. SCRUGGS.

Defendant moves the court to compel the plaintiff to give a new injunction-bond within twenty days, conditioned to pay all money due or to become due defendant, and all costs & damages as the statute of Miss. requires; and on failure to do so, that the injunction stand dissolved.

SALE & DOWD, *Sols.*

Filed & entered July 22, 1875.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 22 day of July, 1875, the same being a day of the June term of said court, A. D. 1875, a decree was made & entered in said court in the words & figures following, to wit:

Decree ap. rec'iver.

M. & C. R. R. Co.
v.
NARCISSA SCRUGGS.

In this cause, on motion of comp't, the court ordered that a rece'ver be appointed to take charge of the property in dispute in this cause; & it appearing to the court that Thomas P. Young, jr., a citizen & resident of Alcorn County, Mississippi, is a proper & suitable person to act as rec'iver, is by the court appointed such, who, upon being first duly sworn to faithfully discharge his duties as such & entering into a bond with good & sufficient surety in the penalty of three thousand dollars, conditioned to faithfully discharge his duties & to pay over & account for such rent as he may or should by due diligence rece've
129 shall take charge of & rent out for a period of one year the hotel at Corinth known as the Scruggs House. He shall make only such necessary repairs as the premises require, & shall from the rents pay taxes & keep the same insured suitable insurance company. The court reserves the right to make all such orders *as* from time to time as it deems proper.

Ordered this July 22nd, 1875.

R. A. HILL, *Judge.*

And afterwards, to wit, on the said 22 day of July, 1875, a day of said term, the following further order was made in said cause, to wit:

Order.

MEMPHIS & CHARLESTON RAILROAD CO.
v.
NARCISSA SCRUGGS.

On this the 22 day of July, 1875, a day of said term, this cause came on to be heard on the motion of defendant to execute a new injunction bond, conditioned as the statute of Mississippi directs, and the parties appearing by their counsel it is ordered by the court that said motion be sustained, and that said complainant within thirty days from this order file an additional bond in the penal sum of sixty-five thousand dollars with good security, conditioned to pay the amount of the final decree of the Alcorn chancery & supreme court of Mississippi, injoined in this court, and all money due & to become due on the same, and all costs and damages provided by statute in case said injunction be dissolved. And on failure to give such bond within the time
130 that said injunction stands wholly dissolved, and execution may issue as at law.

R. A. HILL, *Judge.*

And afterwards, to wit, on the same day, being July 22, A. D. 1875, a day of said term, the following further order was made in this cause, to wit:

Order.

MEMPHIS & CHARLESTON R. R. Co.
vs.
NARCISSA SCRUGGS. 215.

Be it remembered that on this the 22 day of July, 1875, a day of the

June term, 1875, this cause came on to be heard & was heard on the motion of complainant to reinstate the injunction heretofore dis'olved in part by the order of this court, and after argument of counsel by both parties who appeared before the court, it is ordered that said motion be overruled and that said Narcissa Scruggs give a refunding bond in the penal sum of ten thousand dollars, conditioned to pay any moneys she may collect as the court may hereafter direct, and thereupon said bond was executed by said N. Scruggs with E. R. Matthews as surety, and said bond was approved by the court & filed.

R. A. HILL, *Judge.*

Which said bond is in the words & figures following, to wit.

Refunding bond.

Know all men by these presents, that we, Narcissa Scruggs as principal, and E. R. Matthews as security, are held and firmly bound unto the Memphis & Charleston Railroad Company in the penal sum
131 of ten thousand dollars, for payment of which, well and truly to be made, we bind ourselves, our heirs, & assignees, firmly by these presents. Given under our hand & seals, this the 22 day of July, 1875.

The condition of the above obligation is such that whereas on the 9 day of July, 1875, an order was entered in the case of the Memphis & Charleston Railroad Company vs. said Narcissa Scruggs, dissolving the injunction heretofore granted in this cause as to all of the decree of the chancery court of Alcorn County enjoined, except the sum of twenty thousand dollars, and whereas another order was this day entered overruling complainant's motion to reinstate said injunction and requiring said N. Scruggs to give a refunding bond:

Now if the said circuit court of the United States or the supreme court shall hereafter decree that said N. Scruggs shall pay to said Memphis & Ch. R. R. Co. any moneys, the money collected on said final decree of the chancery & supreme court of Miss. and under the order of this court dis'olving said injunction, and if said Narcissa Scruggs shall pay over according to the decree of said circuit court any money so collected by her, then this obligation to be void, otherwise to remain in full force & effect.

N. SCRUGGS, [SEAL.]
Per E. R. MATTHEWS.
E. R. MATTHEWS. [SEAL.]

I approve the foregoing bond & security.

R. A. HILL, *Judge.*

Filed & approved by the court July 22, 1875.

G. R. HILL, *Clerk.*

132 And afterwards, to wit, on the 2 day of August, 1875, an additional injunction bond was filed in said cause which is in the words & figures following, to wit.

Additional inj. bond.

In the U. S. court at Oxford, Mississippi.

MEMPHIS & CHARLESTON RAILROAD COMPANY
v.
NARCISSA SCRUGGS.

Know all men by these presents, that we, the Memphis and Charles-

ton Railroad Company, principal, & R. T. Wilson, F. H. Cassett, J. C. Neely, & Napoleon Hill as sureties, are held & firmly bound unto Narcissa Scruggs, in the sum of seventy thousand dollars, ($70,000.00), to be paid to said Narcissa Scruggs, her heirs, executors, administrators or assigns, for which payment, well & truly to be made, we bind ourselves, our heirs, executors & administrators firmly by these presents, sealed with our seals & dated 30th day of July, A. D. 1875.

The condition of this obligation is such, that whereas the above bound Memphis & Charleston Railroad Company has heretofore obtained an injunction & supercedure enjoining & restraining the said defendant, etc., until the same can be heard & determined at the honorable the circuit court of the United States for the northern district of Mississippi at Oxford.

This bond is given in pursuance of an order of said circuit court of the United States, requiring a more complete bond to be given & is an additional bond to the one now on file in said cause.

Now if the said Memphis & Charleston Railroad Company in
133 case the injunction shall be dissolved, shall within thirty days thereafter, well & truly pay & satisfy all such costs and the principal & interest of the judgment enjoined, together with all damages that shall result from the wrongful suing out of this injunction & abide by & perform the decree of said circuit court, then this obligation shall be void; otherwise the same shall remain in full force & virtue.

Signed, sealed & delivered this 30 July, 1875.

MEMPHIS & CHARLESTON RAILROAD CO. [SEAL.]
By W. Y. C. HUMES,
Sol. & Att'y.

R. T. WILSON, [SEAL.]
By W. Y. C. HUMES,
Attorney in Fact.

F. H. CASSETT, [SEAL.]
By W. Y. C. HUMES,
Attorney in Fact.

J. C. NEELY, [SEAL.]
By W. Y. C. HUMES,
Att'y in Fact.

NAPOLEON HILL, [SEAL.]
By W. Y. C. HUMES,
Att'y in Fact.

UNITED STATES OF AMERICA,
District of West Tennessee:

I, Hunsdon Cary, a commissioner of the circuit court of the United States within and for said district, do hereby certify that on this day personally appeared before me W. Y. C. Humes, attorney in fact of R. T. Wilson, F. H. Cassett, J. C. Neely and Napoleon Hill, and who is to me known to be the individual named in and who executed the foregoing bond and acknowledged before me that he signed, sealed and delivered the said bond as his free and voluntary act as such attorney in fact, for the uses and purposes therein expressed.

Witness my hand and official seal this 30th day of July 1875.

[L. S.] HUNSDON CARY,
U. S. Com'r Dist. West Tenn.

134 The within bond & security are approved this Aug. 2, 1875.
R. A. HILL, *Judge.*

Filed & approved Aug. 2, 1875.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 6th day of August, 1875, a bond of defendant was filed in said cause, which is in the words & figures following, to wit:

Refunding bond of def't.

Know all men by these presents that we, Narcissa Scruggs, as principal, & Elliott R. Matthews and James P. Matthews, as sureties, are held and firmly bound unto the Memphis and Charleston Railroad Company in the penal sum of ten thousand dollars, for payment of which, well & truly to be made, we bind ourselves, our heirs & assigns, firmly by these presents. Given under our hands & seals this the 5 day of August, 1875.

The condition of the above obligation is such, that whereas on the 9th day of July, 1875, an order was entered in the case of the Memphis & Charleston Railroad Company v. Narcissa Scruggs, dissolving the injunction heretofore granted in this cause as to all of the decree of the chancery court of Alcorn County enjoined, except the sum of twenty thousand dollars; and whereas another order was this day entered overruling complainant's motion to reinstate said injunction, and requiring said Narcessa Scruggs to give a refunding bond:

Now, if the said circuit court of the United States or the supreme court shall hereafter decree that the said Narcessa Scruggs shall pay to said Memphis & Charleston Railroad Company any moneys
135 she may collect on said final decree of the chancery & supreme court of Miss., and under the order of this court dissolving said injunction; and if said Narcissa Scruggs shall pay over according to the decree of said circuit court any money so collected by her, then this obligation to be void, otherwise to remain in full force & effect.

NARCISSA SCRUGGS. [SEAL.]
ELLIOTT R MATTHEWS. [SEAL.]
JAMES P. MATTHEWS. [SEAL.]

Filed Aug. 6th, 1875.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 12 day of August, 1875, a rec'iver's bond was filed in said cause, which is in the words & figures following, to wit:

Bond of rec'iver.

THE STATE OF MISSISSIPPI,
County of Alcorn:

Know all men by these presents that we, T. P. Young, jr., as principal, and W. T. Samuels, R. M. Young, & Houston Mitchell, as sureties, are held and firmly bound unto the State of Miss. in the penal sum of $3,000 dollars, for which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Signed with our names and sealed with our seals this the 5th day of August, A. D. 1875.

The condition of the above obligation is such, that whereas the above bound T. P. Young was, by the United district court at O'ford, on, to wit, the 22 day of July, A. D. 1875, duly appointed a rece'ver in a certain cause pending in said court wherein The Memphis &
136 Charleston Railroad Company is plaintiff and Narcissa Scruggs

is defendant, and for the period of one year required to take charge of the hotel at Corinth known as the "Scruggs House," and the same to rent out, &c., &c.:

Now, if the said Young will rece've and safely rend' all money or property that may come into his hands as such receiver, and will rend' a full and true account of his receipts and disbursements, and of the condition and situation of the money and property in his hands as often as he may be required by the court, and will dispose of and deliver such money and property in such manner and to such purpose as the court may at any time direct, and will in all things faithfully discharge the duties of his office as rece'ver, then this obligation to be void, otherwise to remain in full force and effect.

THOS. P. YOUNG, JR. [L. S.]
W. T. SAMUELS. [L. S.]
R. M. YOUNG. [L. S.]
H. MITCHELL. [L. S.]

STATE OF MISSISSIPPI,
Alcorn County:

I, W. H. Dobson, an acting justice of the peace and ex officio a notary public, duly commissioned by the gov. of the State of Mississippi, do hereby certify that I consider the within and foregoing bond altogether good and sufficient, as good as could be made for the amount named in said bond.

Given under my hand and official seal this 10 Aug., 1875.

W. H. DOBSON,
J. P. and Notary Public.

Filed Aug. 12, 1875.

G. R. HILL, *Clerk.*

137 And afterwards, to wit, on the 25 day of August, 1875, an execution was issued in said cause, which is in the words and figures following, to wit:

Execution.

The President of the United States to the marshal of the northern district of Mississippi, greeting:

We command you that of the goods and chattels, lands and tenements of defendant, Memphis and Charleston Railroad Company, and R. W. Price, John M. Nelson, A. R. Wiggs, D. E. Coleman, and George P. Hammerly, late of your district, you cause to be made the sum of twenty-one thousand three hundred and thirty-six dollars and 99 cents, which Narcissa Scruggs, lately in the district court of the United States for the northern district of Mississippi has recovered against them for her damages which she sustained by reason of the non-performance of a certain promise and assumption by said defendants to the said plaintiff, made with interest on the said sum, at 6 per centum per annum, from the 9 day of July, 1875, until paid; also the sum of two dollars and 65 cents for the costs to cl'k on this writ in that behalf expended, whereof the said defendants are convicted, as appears to us of record; and that you have the said moneys before the judge of the district court of the United States for the northern district of Mississippi, at Oxford, on the 1st Monday in December next, to render to the said plaintiff for her damages and costs aforesaid, and have then there this writ.

Witness the Hon. Robert A. Hill, judge of the district court of
138 United States for the district of Mississippi, at Oxford, the first Monday of June, A. D. 1875, and 99 year of the Independence of the United States.

Issued the 25 day of Aug., A. D. 1875.

[S'L OF CT.]

G. R. HILL, *Clerk.*

Upon the foregoing execution are the following endorsements made by the United States marshal, to wit:

Rec'd on the *the* within execution nineteen thousand two hundred & seventeen $\frac{63}{100}$ dollars in part satisfaction of the same from the Memphis & Charleston Railroad Co. this 28 August, 1875.

$19,217.63.

J. H. PIERCE,
U. S. Marshal.

Held up as to the remainder of the execution by direction of plaintiff's attorneys until Sept. 25, 1875.

J. H. PIERCE,
U. S. Marshal.

Rec'ived at Memphis, Tenn., Aug. 28th, 1875, of J. H. Pierce, U. S. marshal N. dist. Miss., nineteen thousand and eleven $\frac{63}{100}$ dollars on this writ.

SALE & DOWD,
Attorneys for Plaintiff.

Further proceedings under this writ further than the collection of nineteen thousand and eleven $\frac{63}{100}$ dollars, with the marshal's & clerk's costs shown hereon were estopped by notice of a writ of injunction issued by U. S. dist. court and herewith returned.

J. H. PIERCE,
U. S. M.

139 The following is the writ referred to in the marshal's return above, to wit:

Inj. on marshal.

The President of the United States to the marshal of northern district of Mississippi, greeting:

Whereas on the 25 day of August, 1875, an execution was issued out of our district court of the United States for the northern district of Mississippi to the marshal of said district, in favor of Narcissa Scruggs and against the Memphis & Charleston R. R. Company, for the sum of $21,336.99, issued by order of court upon the dissolution of the injunction in case said company *vs.* Mrs. Scruggs, & whereas it appearing to the court that said execution has been satisfied by payment to the said marshal the sum of $19,011$\frac{63}{100}$, and by payment to the clerk of this court the balance of said sum and interest, to wit, $2,510$\frac{83}{100}$, whereupon it is ordered that the said marshal immediately return said execution into court.

Now therefore we command you, the said marshal, that you cause to be returned forthwith into court said execution with your action thereon.

Witness the Hon. R. A. Hill, judge of said court, and seal thereof, at Oxford, on this the 24 Sept., 1875.

[L. S.] G. R. HILL, *Clerk.*

I hereby acknowledge service Sept. 24, 1875.

J. H. PIERCE,
U. S. Marshal.

And to wit, on said 24th Sept., 1875, an amended bill & bill of
140 interpleader was filed in said cause, which is in the words and figures following, to wit:

Amended bill & bill of interpleader.

To the honorable R. A. Hill, judge of the circuit court of the United States court for the northern district of Mississippi at Oxford.

THE MEMPHIS & CHARLESTON RAILROAD CO.
v.
NARCISSA SCRUGGS & OTHERS.

The amended bill & bill of interpleader of the Memphis & Charleston Railroad Co.

Complainant, an incorporated company under & by virtue of the laws of the State of Tennessee, would respectfully show to your honor that on the 18th day of January, 1875, it filed its original bill in the chancery court of Tishomingo ward, Alcorn County, Mississippi, against the def't, Narcissa Scruggs, & others, by which they sought to enjoin, and did enjoin, a judgment rendered against it & in favor of def't, Narcissa Scruggs, by the supreme court of Mississippi for $31,666.66, with interest from 21st day of April, 1871, & sought to have itself entirely released therefrom for causes set out & contained in the said bill, which is incorporated herein & made a part hereof, but need not be copied. This cause was, soon after its filing, remanded under the acts of Congress from said chancery court of Alcorn County to this honorable court. That this comp't is a resident & foreign corporation having its situ & incorporation in the city of Memphis, Tennessee, & the def't, Narcissa Scruggs, is a non-resident of the State of Mississippi,
141 having her residence in Huntsville, State of Alabama; that on the 9th day of July, 1875, in this cause your honor dissolved the injunction to the extent of the excess over & above $20,000.00, such excess being the sum of $21.336.99, for which sum the court ordered an execution to issue upon a refunding bond, being given for the return of sum so collected, if, upon the final hearing, the def't should not be found entitled thereto, & such refunding bond having been given by defendant on the 25th day of August, 1875, an execution issued from such judgment, & on the 28th day of August, 1875, an execution issued from such judgment, & on the 28 day of August, 1875, complainant paid upon said execution, in part satisfaction thereof, the sum of ($19,011.23) nineteen thousand & eleven $\frac{23}{100}$ dollars, & took the marshal's receipt therefor; that previously def't, Narcissa Scruggs, on the 28th June, 1872, at Huntsville, Ala., drew her draft on complainant for $2.325.95, bearing interest at 8% per annum from date, which was paid by comp't, & made other payments on account of the differences between them, & the debt claimed to be due by it to her; that at the same time W. F. Dowd, the solicitor of def't, Narcissa Scruggs, was present & witnessed

the payment of this sum, & on the same day & previous to that time this complainant then & there offered to pay to the said Dowd, or the marshall of this court, the whole sum due, as by said decree ordered, provided the def't released comp't from the operation & liability upon an attachment or garnishment which one J. H. Viser had preferred in this honorable court, as well as in the chancery court of Alcorn County, against def't, Narcissa Scruggs, the facts of
142 which are as follows: the def't, J. H. Viser, sued out an attachment, as it is informed, against Mrs. Narcissa Scruggs, & attached the hotel in dispute in this cause as her property, & also garnisheed comp't to reach whatever it might be owing to her upon the final settlement of the dispute herein between them. Notice also was given to comp't personally by the attorneys of said Viser of the pendency of said suit. One W. F. Dowd also has notified complainant of his lien upon said decree for his professional services rendered to def't in the litigation in the supreme & other courts. Soon after such notice & the decree of the 9th of July, 1875, the def't, Narcissa Scruggs, notified comp't on two several occasions not to pay to W. F. Dowd any portion of the decree, although the decree of this court orders said sum for which execution was ordered to be paid to def't, Narcissa Scruggs, on her solicitor's sale to Dowd. In this dilemma, comp't could only pay the money to the marshal, which it did.

Comp't did not, when the original bill was filed, make said Dowd & Viser parties thereto, for it never knew that any controversy was pending or existed between them & def't, Scruggs, & the interpleader has become necessary from the fact that Narcissa Scruggs refuses to recognize or settle the claim of Viser, but insists upon the collection of her full decree, regardless of the attachment of said Viser upon comp't. Complainant has been informed that def't, Narcissa Scruggs, has reduced the debt to Viser to about $2,000.00, but how this is it does not positively know, the difference between the parties being about $500.00.

143 Comp't notified Narcissa Scruggs, her attorney, W. F. Dowd, & son-in-law, & agent, E. P. Matthews, that it was ready to pay the whole amount of the decree of $21,336.99, provided they would get a release of its liability to said Viser by notice of attachment & garnishment aforesaid, & requested & asked them to procure such settlement & release from said Viser, which they offered to do, & stated that they would upon their return to Corinth attempt a settlement with said Viser, & notify comp't upon their return, or soon thereafter. Comp't was notified that a settlement was impossible with Viser, & that comp't must take such action as it deemed advisable, & that the marshal of the U. S. court would be ordered to hold up the execution until the 25th day of September, 1875, in order to give comp't time within which to take such steps as it might deem proper for its protection.

Complainant on said occasion made application to said Narcissa Scruggs, or her agents, for leave to pay over the amount due to said Viser, without subjecting itself to responsibility therefor, which was refused.

Complainant also applied to def't, Narcissa Scruggs, to release or secure complainant against the effect & operation of said attachment, & from further responsibility in the premises, which she refused to do, & said cause is still pending in full force against comp't, & its liability is yet undetermined, & complainant further says that since the order of your honor ordering it to pay said sum of $21,336.99, it has at all times been willing to pay said money to such person as should be lawfully

144 entitled thereto & to whom it could pay it with safety, & he here tenders into court the balance due, $2,510.83, upon said decree, & complainant further alleges that it does not claim any interest in said sum; that he does not in any respect collude with either the said Dowd, Scruggs, or Viser touching the matter in question; that it has not exhibited this bill at the request of either of them; that it has not been indemnified by said defendants or either of them, but merely of its own free will & to av'id being molested or injured touching the matters contained in said bill, & to prevent in any event its being made to pay over the money a second time is this bill filed.

Complainant therefore prays that process issue to compel said Narcissa Scruggs, J. H. Viser, & W. F. Dowd to be made def'ts hereto by proper process, & be required to answer fully & particularly; that said def'ts be required to interplead & settle their rights to said money & comp't be allowed to pay the same into this court. And that said Viser be injoined from further prosecuting his attachment suit against complainant; that injunction issue or your honor order that the execution issued from this court upon the dissolution of the injunction be returned & stayed, & that said def'ts be required to interplead & this comp't be discharged from all further liability and may have all the costs, the costs thereof, & that it may have all such other & further relief as the necessities of this cause require; that this may be filed as an amended bill as well as an interpleader, & that on final hearing the relief
145 prayed by the original bill as modified herein may be fully granted to it. This is the first application for writ of injunction upon this cause of action.

HUMES & POSTON,
Sol's for Comp't.

STATE OF TENNESSEE,
County of Shelby, City of Memphis:

Personally appeared before me, Hunsdon Cary, a notary public in & for the city, county, & State aforesaid, duly commissioned & qualified, the Memphis & Charleston Railroad Company, the complainant, by its secretary & treasurer, S. R. Cruse, & made oath that the statements in the foregoing bill are true to the best of its information, knowledge, & belief, & that there is no collusion between it & the def'ts or either of them.

[S'L OF CORPORATION.]

S. R. CRUSE,
Secretary & Treasurer of the Memphis & Charleston R. R. Co.

Sub. & sworn to before me this 22 day of Sept., 1875, & said secretary & treasurer at same time, in my presence, affixed the seal of said corporation. In testimony whereof witness my hand & notarial seal, at office in Memphis, Tennessee, this the 22d day of September, 1875.

[L. S.]

HUNSDON CARY,
Notary Public.

Upon complainants paying into court the amount of $2,510.85, the clerk of this court will issue the injunction prayed for & will also issue notice to the marshal to return the execution heretofore issued herein.
Sept. 24, 1875.

R. A. HILL,
Judge U. S. Court, Northern District Mississippi.

(Filed & injunction issued & spa. & notice to marshal Sept. 24th, 1875.
G. R. HILL, *Clerk.*

146 And, to wit, in said cause, on said 24 day of September, 1875, an injunction was sued out, which is in the words and figures following, to wit:

Injunction on Viser.

The President of the United States to James H. Viser, and his agents, attorneys, and all persons for him concerned, and to the marshal of the northern district of Mississippi, greeting:

In our district court of the United States, for the northern district of Mississippi, at Oxford, the Memphis and Charleston Railroad Company has filed its amended bill & bill of interpleader for relief, and for an injunction restraining the said James H. Viser from further prosecuting his attachment suit against said M. & C. R. R. Co., and has obtained the same returnable before the said court sitting as a court of equity, at Oxford, on the 6th day of December, 1875. Therefore we command and strictly enjoin upon you, the said James H. Viser, & your agents, attorneys, and all persons for you concerned, to desist from any and all further proceedings upon the aforesaid attachment suit against said Memphis & Charleston Railroad Company until the order or decree of our said district court be made to the contrary.

This obey at your peril. And we command you, the said marshal, to deliver to said defendants a copy of this writ and have the same before our said court at the time and place aforesaid.

Witness the Hon. R. A. Hill, judge of said court, & the seal thereof, at Oxford, the 24 day of September, A. D. 1875.

[L. S.] G. R. HILL, *Clerk.*

147 Upon the foregoing writ the marshal made the following return:

Executed this process this day personally, to wit: Oct. 6th, 1875, on J. H. Viser and upon J. A. Green and J. W. Pickens, attorneys, Oct. 15th, 1875, by delivering to each of them a true copy of this process, and upon H. A. Barr, attorney, Oct. 30, 1875, he waiving copy.

J. H. PIERCE,
U. S. Marshall.

Service, 8; travel, 6; 2 capias, 100; E. & ret., 50—$15.50.

And, to wit, on said 24 Sept., 1875, a writ of subpœna was issued in said cause in the words & figures following, to wit:

Spa.

The President of the United States to the marshal of the northern district of Mississippi, greeting:

We command you, without delay, to summon Narcissa Scruggs, James H. Viser, and Wm. F. Dowd, citizens of the State of Mississippi, residing in the northern district thereof, that they be and appear before the district court of the United States, sitting as a court of equity, to be held at the town of Oxford, for the said northern district of Mississippi, on the first Monday of December next, to answer the amended bill and bill of interpleader of the Memphis & Charleston Railroad Company, citizen' of the State of Tenn., & that they do file their answer, plea, or defence with the clerk of said court, on or before the meeting of the same, or judgement pro confesso will be given against them by default, and have then there this writ.

148 Witness the honorable Robert A. Hill, judge of the district court of the United States for the northern district of Mississippi, at Oxford, the first Monday of June, A. D. 1875, and 99 year of the Independence of the United States.

Issued the 24th day of September, 1875.

[L. S.] G. R. HILL, *Clerk.*

Upon the forgoing writ the marshal made his return in the words & figures following, to wit:

Executed the within process this day, Oct. 4th, on defendant J. H. Viser, and Oct. 13, 1875, upon W. F. Dowd, personally, by delivering to each of them a true copy thereof. Defendant N. Scruggs not found in my district after diligent search.

Nov. 5th, 1875.

J. H. PIERCE,
U. S. Marshal,
By G. W. JONES,
Deputy.

Service 4.00; 2 copies, 1.00; E. & ret., 50c.; travel, 12.00=$17.50.

And afterwards, to wit, on the 29 day of November, 1875, the answer of J. H. Viser to the foregoing bill was filed, which is in the words and figures following, to wit:

Answer of Viser.

The answer of James H. Viser to the bill of interpleader filed by the Memphis & Charleston Railroad Company against him, Narcissa Scruggs, and others, in the district court of the United States, northern district of Mississippi, at Oxford.

This defendant, saving and reserving all exceptions that can or
149 may be taken to said bill, answering says, it is true as stated by the complainant that an attachment suit of respondent against the said Narcissa Scruggs is pending on the law side of this hon. court, in which the said railroad company has been garnisheed as the debtor of the said Narcissa Scruggs; and also, that another suit is pending between the same parties in the chancery court of Alcorn County, Mississippi, in which the said railroad company has been enjoined by respondent from paying over to said Narcissa Scruggs the amount of its indebtedness to her, until the debt due by her to respondent and which constitutes a lien on the property mentioned in the bill shall be satisfied.

Your respondent alleges further, that the said property is under attachment by process, both from this court and the said chancery court of Alcorn County. He also states that the said Scruggs is indebted to him in the sum of $5,029.46, calculated to Dec. 1, 1875, on account of a certain note and deed of trust, the foundation of the suits aforesaid, copies of which are herewith filed as Exhibits A & B, & made a part of this answer. A copy of the account also as the same exists between the said Narcissa Scruggs and respondents, containing a true statement of her indebtedness to respondent on account of the said notes and deed of trust is herewith filed as Exhibit C, which is prayed to be taken as part of this answer.

And having fully answered, respondent prays that the said railroad company be required to pay him said sum so due him as aforesaid,

150 together with his cost herein, and of the funds so due by them to said Narcissa Scruggs, and for all such relief as the nature & equity of his case requires.

J. H. VISER.

THE STATE OF MISSOURI,
County & City of St. Louis:

Before the undersigned, a notary public in & for the county & city aforesaid, this day personally appeared J. H. Viser, to me well known, who being by me duly sworn, says that the facts stated in the foregoing answer of his own knowledge are true, and those stated as on information derived from others he believes to be true.

J. H. VISER.

Sworn to & subscribed before me this 24 day of November, 1875, & I certify that I was duly qualified on the 18th day of November, A. D. 1874, commission expiring on the 16th day of November, A. D. 1878.

[L. S.] EDWARD A. PENERO,
Notary Public, St. Louis Co., Mo.

Filed Nov. 29, 1875.

G. R. HILL, *Clerk.*

The following is Exhibit C referred to in the foregoing answer (the other exhibits, to wit, A & B, to the foregoing answer are also made exhibits to a cross-bill of said Viser hereinafter filed and follow immediately thereafter in this record), to wit:

Exhibit C.—H. V. answer.

Mrs. N. Scruggs to J. H. Viser, Dr.

1870.			
May 11.	Note due May 11, 1870		$5,000 00
1871			
Sept. 26.	Int. from May 11, 1870, to Sept. 26, 1871, 10 %		687 50
			$5,687 50
" "	By cash		150 00
			5,537 50
151			5,537 50
1871.			
Oct.	26. Int. to Oct. 26, 1871		46 14
			5,583 64
" "	By cash		150 00
			5,433 64
Nov.	26. Int. to Nov. 26, 1871		45 26
			5,478 90
" "	By cash		150 00
			5,328 90
Dec.	" Int. to Dec. 26, 1871		44 40
			5,373 30
" "	By cash		150 00

1872.			5,223 30
Jan'y	26.	Int. to Jan y 26, 1872	43 52
			5,266 82
"	"	By cash	150 00
			5,116 82
Feb'y	26.	Int. to Feb'y 26, 1872	42 64
			5,159 46
"	"	By cash	150 00
			5,009 46
Mch	26.	Int. to March 26, 1872	41 74
			5,057 20
"	"	By cash	150 00
			4,901 20
Oct.	1.	Int. to Oct. 1, 1872	251 80
			5,153 04
"	"	By cash	50 00
1873.			5,103 04
Feb'y.		nt. to Feb'y, 1873	170 08
			5,273 12
"		To am't paid insurance on hotel	68 54
			5,341 66
1874.			
June	8.	Int. to June 8, 1874	189 90
"	"	To am't paid insurance on hotel	60 00
			5,571 56
"	30.	Int. to June 30, 1874	34 01
			5,605 57
"	"	By cash, their receiver bill	100 00
			5,505 57
Aug.	1.	Int. to Aug. 1, 1874	45 90
"	1.	To am't insurance paid on hotel	23 00
			5,574 47
"	"	By cash, the'r R. bill	300 00
			5,274 47
Sept.	1.	Int. to Sept. 1, 1874	44 00
			5,318 47
"	"	To am't paid ins. on hotel	150 00
			5,468 47

Sept.	1.	By cash, the' R. bill	300 00
			5,068 47
Oct.	1.	Int. to Oct. 1, 1874	43 07
			5,111 54
"	"	By cash, the'r R. bill	300 00
			4,911 54
Nov.	1.	Int. to Nov. 1, 1874	40 93
			4,952 47
"	"	By cash, the'r R. bill	300 00
			4,652 47
Dec.	1.	Int. to Dec. 1, 1874	38 77
"	"	To am't paid insurance on hotel	101 00
			4,792 24
152	Dec.	1. By cash of R. bill	220 00
			4,572 24
1875.			
Dec.	1.	Int. to Dec. 1, 1875	457 22
			5,029 46

Filed 29 Nov., 1875.

G. H. HILL, *Clerk.*

And afterwards, to wit, on the 6th day of December, 1875, the same being a day of the December term of said court, A. D. 1875, an order was made in said cause in the words & figures following, to wit:

Order.

In United States circuit court for the northern district of Mississippi, at Oxford.

THE MEMPHIS & CHARLESTON RAILROAD CO.
v.
NARCISSA SCRUGGS ET AL.

In this cause, for satisfactory reasons appearing to the court, it is ordered that the replication of complainant to the answer of def't be filed nunc pro tunc as of the first rule day after the filing of said answer.

And, to wit, on said 6th day of December, 1875, a replication to the answer of defendant was filed, which is as follows, to wit:

Replication to ans. of N. Scruggs.

In the circuit court of the United States for the northern district of Mississippi, at Oxford.

THE MEMPHIS & CHARLESTON RAILROAD COMpany
v.
NARCISSA SCRUGGS ET AL.

The replication of the Memphis & Charleston Railroad Co., the complainant, to the answer of Narcissa Scruggs, the defendant.

153 This respondent, saving & reserving to himself, now & at all

times hereafter, all & all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereto says that the same is untrue, & that he will aver, maintain, & prove his bill to be true, certain & sufficient in law, and that the answer of Narcissa Scruggs, defendant, is uncertain, untrue, & insufficient to be replied unto by this repliant. That any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, & not herein & hereby well & sufficiently replied to, confessed & avoided, traversed or denied, is true; all of which matters & things this repliant is & will be ready to aver, maintain, & prove, as this honorable court shall direct, & humbly pray as in & by his said bill he has already prayed.

HUMES & POSTON,
Sol's for Complainant, M. & C. R. R. Co.

Filed Dec. 6th, 1875.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 11 day of December, 1875, a cross-bill of Viser was filed in the words & figures following, to wit:

Cross-bill of Viser to amended bill & bill of interpleader.

The cross-bill of J. H. Viser to the bill of interpleader filed by the Memphis & Charleston Railroad Company against him, Narcissa Scruggs, and others, in the district court of the United States, northern district of Mississippi, at Oxford.

This complainant states that an attachment suit of this com-
154 plainant against the said Narcissa Scruggs is pending on the law side of this hon. court, in which the said railroad company has been garnisheed as the debtor of the said Narcissa Scruggs, and also that another suit is pending between the same parties in the chancery court of Alcorn County, Mississippi, in which the property described in the original & amended bill is under attachment, and in which also said railroad company has been summoned as garnishee. Complainant also states that he has obtained a decree in said chancery court, subjecting the income of the property named in the bill to his debt.

This complainant alleges that he holds a mortgage or deed of trust on the said hotel property, described in the original & amended bills, which he is now seeking to force in the said chancery suit in Alcorn County. He also states that the said Narcissa Scruggs is indebted to him in the sum of $5,029.46 (calculated to December 1st, 1875) on account of the note of herself and her husband of date May 11, 1869, and the said mortgage which was given to secure the same, copies of which are herewith filed as Exhibits A & B, and made a part of this answer and cross-bill. A copy of the account also as the same exists between the said Narcissa Scruggs and respondent, containing a true statement of her indebtedness to him on account of the said note and deed of trust, is herewith filed as Exhibit C, which is prayed to be taken as part of this cross-bill.

This complainant further states that the said railroad company thro'
some arrangement with the said Narcissa Scruggs claims to have
155 became the owner of the said hotel & premises from the said Narcissa Scruggs by title to him unknown, but subject to respondent's said mortgage; and the said Narcissa Scruggs, as he is informed

and believes, is endeavoring to force the said company to pay her the full amount due by them to her on account of said property without a settlement of the debt and claim of this complainant as aforesaid; and further that the said Narcissa Scruggs is a non-resident of the State of Mississippi, and has no other property, as he is informed and believes, in this State except the property before mentioned, or the purchase-money due therefor to her by the said company. Wherefore this complainant prays that the said company be required to pay over to him out of the fund in their hands due said Narcissa Scruggs for the said property the amount due him on the said note and mortgage; and he prays an injunction to restrain said company from paying over said moneys to said Narcissa Scruggs until the said claim of complainant on said property has been satisfied; he also prays for all other proper process and for such other and further relief as the nature and equity of his case requires, and, as in duty bound, will ever pray, &c.

J. H. VISER.

UNITED STATES OF AMERICA,
Northern Dist. of Miss:

Before the undersigned, clerk of the dist. court for said dist., appeared the said J. H. Viser and made oath that the statements contained in the foregoing bill are true.

J. H. VISER.

This Dec. 11th, 1875.

G. R. HILL, *Clerk.*

156 To the clerk of said court:

You will issue the injunction as prayed for in the within bill, without bond, until ordered by the court.

Dec. 11, 1875.

R. A. HILL, *Judge.*

Filed Dec. 11th, 1875, & injunction issued.

G. R. HILL, *Clerk.*

Exhibit A referred to in the foregoing cross-bill.

This indenture, made and entered into on this 11th day of May, A. D. 1869, by and between John W. Scruggs & Narcissa Scruggs, wife of the said John W. Scruggs, parties of the first part, residing at the town of Huntsville, in the county of Madison, in the State of Alabama, parties of the first part, & A. E. Reynolds and James E. Stewart, of the town of Corinth, in the county of Tishomingo, in the State of Mississippi, parties of the second part, and James H. Viser, of the county of Lafayette, in the State of Mississippi, of the third part, witnesseth: that the said parties of the first part, for and in consideration of the indebtedness hereinafter mentioned, and also of the sum of ten dollars to them in hand paid by the said parties of the second part, the rece'pt whereof is hereby acknowledged, have this day bargained, sold, and conveyed, and by these presents do bargain, sell, and convey unto the said parties of the second part, their heirs, executors, administrators, and assigns, the following-described property lying, being, and situated in the town of Corinth, in the county of Tishomingo & State of Mississippi, to

157 wit, all the property known as the Scruggs House, a hotel situated in the town of Corinth, in the southeast angle of the crossing of Memphis and Charleston Railroad and the Mobile & Ohio Railroad, the lease of the lot and grounds, and all the rights and privileges, with the appurtenances, fixtures, household & kitchen furniture thereunto belonging; in trust, however, under the following conditions, to

wit: that whereas the said parties of the first part, on the 11th day of May, A. D. 1869, executed their joint and several promissory notes to the said party of the third part. One for the sum of five thousand dollars for money loaned to Mrs. Narcissa Scruggs for the purpose of purchasing family supplies & necessaries & wearing apparel for herself and children, payable twelve month' after date, and one for the sum of one thousand dollars, payable in monthly instalments of eighty-three dollars & thirty-three and one third cents (which was renewed on 11 day of May, 1870), which said notes were given for money loaned to Mrs. Narcissa Scruggs for the purpose of purchasing family supplies or necessaries & wearing apparel for herself and children; and the said parties of the first part being willing and desirous to secure the punctual payment of the said notes to the party of the third part: Now, therefore, until the 11th day of May, 1870, said parties of the second part shall permit said parties of the first part to retain the possession, use, and enjoyment of all the above-described property. It is also hereby stipulated and agreed by the said parties of the first part that they will keep the said property constantly insured, & in case of loss, destruction, or ac-
158 cident they hereby transfer to the said parties of the second part all the policies of insurance, and all the insurance money that may become due on the same shall inure to the benefit of the said party of the third part until he be fully paid. But should said notes remain unpaid when they shall be due, then the said parties of the second part may and shall in the execution of the trust hereby taken upon themselves, on the request of the party of the third part, proceed to sell said property, or so much thereof as may be sufficient and necessary to satisfy said notes, at public auction, to the highest bidder, for cash, at the said hotel, after giving notice according to law, for not less than thirty days, and the proceeds of said sale, after paying the expenses attending the execution of this trust, said parties of the second part shall apply to the payment of said notes, and whatever shall remain after paying said expenses and said notes they shall pay over to the said parties of the first part.

In witness whereof the said parties to this deed have hereunto set their hands and affixed their seals the day and date first above written.

J. W. SCRUGGS. [SEAL.]
N. SCRUGGS. [SEAL.]

The interlineation between the 11 & 12 lines on the 2 page made before acknowledgment.

(Duly stamped & stamp cancelled.)

THE STATE OF ALABAMA,
Madison County:

Personally appeared before me, Louis M. Douglass, judge of probate in & for said county, & clerk of said court, it being a court of record, John W. Scruggs, personally known to me, and acknowledged that he signed, sealed, and delivered the within and foregoing deed as his act and deed, for the purposes therein contained. And also personally came before me this day Narcissa Scruggs, wife of the above-named
159 John W. Scruggs, known also to me, who, on a private examination by me, separate and apart from her said husband, acknowledged that she signed, sealed, & delivered said deed, freely and voluntarily, as her act and deed, without any threat, fear, or compulsion of her said husband.

Given under my hand and seal of said court this 22 day of May, 1869.
[L. S.] LOUIS M. DOUGLASS,
[Stamp.] *Judge & Clerk.*

Filed for record May the 24, 1869.

J. WEBSTER, *Clk.*
By T. D. DUNCAN, *D. C.*

STATE OF MISSISSIPPI,
Tishomingo County:

I, J. Webster, clerk of the probate court of said county, certify that the within deed in trust was this day filed here for record and has been duly recorded here in deed in trust book B, pages 519 & 20.

Witness my hand and official seal at office, Jacinto, Miss., this 24 day of May, 1879.

J. WEBSTER, *Clerk.*
T. D. DUNCAN, *D. C.*

STATE OF MISSISSIPPI,
County of Alcorn:

Personally appeared before me, R. J. Fleming, chancery clerk of said county, the within-named J. W. Scruggs, who acknowledged that he signed, sealed, and delivered the foregoing deed on the day and year therein mentioned as his act and deed.

Given under my hand & official seal this 15th day of April, A. D. 1871

[L. S.] R. J. FLEMING, *Clerk.*

Filed for record April 15th, 1871.

R. J. FLEMING, *Clk.*

Exhibit A to Viser's answer & his x-bill.

Filed Dec. 11, 1875.

G. R. HILL, *Clerk.*

Exhibit B to the foregoing cross-bill.

$5,000.00. HUNTSVILLE, ALA., *May 11th*, 1869.

160 Twelve months after date we or either of us promise to pay to J. H. Viser, or order, the sum of five thousand dollars, for money loaned by the said J. H. Viser to Narcissa Scruggs, for the purpose of purchasing family supplies and necessaries and wearing apparel for herself and children. Interest at 20 per cent. per annum.

N. SCRUGGS.
J. W. SCRUGGS.

Filed Dec. 11, 1875.

G. R. HILL, *Clerk.*

Injunction.

A writ of injunction was duly issued upon the foregoing cross-bill on the 11th day of December, 1875, but said writ has been lost or mislaid, & cannot now be found so as to be copied in this record.

And afterwards, to wit, on the 18 day of December, 1876, a demurrer was filed in said cause to the bill of interpleader into the words & figures, following, to wit:

Demurrer.

In the district court of the United States, northern district of Mississippi.

MEMPHIS & CHARLESTON R. R. Co. v. NARCISSA SCRUGGS. } Bill of interpleader & amendment.

The defendants N. Scruggs & W. F. Dowd, expressly, by protestation not confessing or acknowledging all or any of the matters & things in said bill of interpleader to be true, in manner & form as the same are therein set forth, doth demur thereto and show to the court the following causes.

1st. Said complainant has not, in his said bill, made such a case
161 as entitles him in a court of equity to any discovery or relief from or against this defendant.

2d. The matters set up in said bill have no connection with the original bill and cannot be made an amendment thereto.

3. It is not shown that any legal process has ever been served complainant by either of the parties named as defendants or that th have any legal conflict between them.

4th. It is not shown that there is any legal dispute between either of said defendants so as to justify said bill of interpleader.

5. It is shown that complainant is indebted to defendant in a much larger amount than the said sum of two thousand five hundred dollars, and is amply protected from any contingent liability.

6. For other reasons, apparent from the face of the papers in said cause.

SALE & DOWD,
Sol's for Def't.

We hereby certify that in our opinion the foregoing demurrer is well founded in law and proper to be filed in the foregoing suit.

SALE & DOWD, *Sol.*

Filed Dec. 18th, 1875.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 21st day of December, 1875, J. H. Viser filed his cross-bill and bill of interpleader, which is in the words & figures following, to wit:

Cross-bill of Viser.

UNITED STATES OF AMERICA,
Northern District of Mississippi:

District court, Dec. term, 1875.

To the Honorable R. A. Hill, judge of the district court of the
162 United States for the northern distaict of Mississippi:

Your orator, J. H. Viser, a citizen of the State of Missouri, who was made a def't to the interpleader herein, respectfully shows to your honor, that on the 11th day of May, 1869, he loaned to Narcissa Scruggs, the def't, who is a citizen of the State of Ala., the then wife of John W. Scruggs, the sum of five thousand dollars ($5,000.00), for

which she executed her note jointly with her said husband, payable twelve months after date, with twenty per cent. interest per annum; that the said Narcissa Scruggs, at the same time, also executed jointly with her said husband another note, for the sum of one thousand dollars ($1,000.00), for the interest on said sum, payable in monthly installments of $83.33⅓. At the same time, the said Narcissa Scruggs, being then & there the owner and possessor, under and by virtue of the laws of the State of Mississippi, as a married woman, of a certain leasehold property in the town of Corinth, in said northern district of Mississippi, being a certain hotel, known as the Scruggs House, and the furniture and fixtures thereto belonging, executed to your orator a deed of trust thereon, jointly with her said husband, to secure the payment of the said notes; that the said deed of trust, being defectively acknowledged by the said makers, as was supposed, was afterwards, on the 15th day of April, 1871, reacknowledged by the said Narcissa and John W. Scruggs, in accordance with the laws of the State of Mississippi, and admitted on the 15 April, 1871, to record in the clerk's office of the chancery court of Alcorn County, in which the said property was and is situated: that the one thon-

163 sand dollar note given for the interest on said loan as aforesaid, was paid by the said John W. Scruggs in his lifetime, and the same was on payment of the last installment delivered up to him. That the said Narcissa Scruggs, after the death of her said husband, which occurred about the 15th day of August, 1871, having failed to pay the other note, your orator, on or about the last of November, 1872, commenced proceedings to subject the said property under the said deed of trust to the payment of said debt, whereupon the said Narcissa Scruggs filed his bill in the chancery court of Alcorn County against your orator and obtained an injunction against your petitioner. And thereupon your petitioner filed his answer and cross-bill in said court, to which she filed her answer and afterwards filed an amended bill in which she insisted that by an agreement between herself and the Memphis & Charleston Railroad Company, made on the 24 day of February, 1871, prior to the reacknowledgement of the deed of trust, she had surrendered the property to the said railroad company, and consequently her deed of trust conveyed nothing to your petitioner. She also denied her ability under the married woman's law, aforesaid, to incumber her property, either for her own debts or those of her husband, and the said chancery court so decided. Whereupon your petitioner carried the case by appeal to the supreme court of the State, which court, on the day of reversed the decree of the said chancery court and remanded the cause, deciding that under the said deed of trust the income of the said property was liable for the said debt due your petitioner. He further states that a portion of said debt has been paid by the said

164 Narcissa Scruggs, but that there is still due him the sum of , a correct account of the amount due him being herewith filed as Exhibit C., and prayed to be taken as part of the cross-bill. He further states that the said chancery suit is still pending in the chancery court of Alcorn County, and that an account has been ordered between the parties, but the same has not yet been taken. He further states that the said Memphis, & Charleston Railroad Company have filed their bill in your honor's court against the said Narcissa Scruggs in which it is claimed that the title to said property passed to said co. the 21 Apr'l, 1871, to which she has filed her answer, touching the identical property mortgaged to your orator as aforesaid, in which she sets up the title to the said property has not yet passed to the said Railroad Company by

virtue of the said agreement of the 24th February, 1871, beforementioned, which is set out & relied upon by both the bill & answer in this cause. And the said Narcissa Scruggs now claims the right to recover the money due from the said Railroad Company without paying the debt due your orator. But your orator alledges that the contract of the 24th February, 1871, was simply an agreement for a surrender of the property to the Railroad Company and passed as title either to the property or the income until certain conditions were performed by the said company and that none of the said conditions have been performed by the company. But your orator alleges that even if it were otherwise he had no notice of said agreement, nor was any record made of the same, and so he insists that his rights in the said
165 property can in nowise be affected by the said agreement. Your orator refers to the original bill and the amended bill and bill of interpleader, and the answer of said Narcissa Scruggs thereto filed in this court, which contain a full statement of the matters in controversy between the said railroad company and the said Narcissa Scruggs, in which will also be found a copy of the agreement of the 24 February, 1871, above referred to. Your orator also herewith files copies of the said notes and deed of trust given to him by the said Narcissa Scruggs and her husband hereinbefore mentioned, marked Exhibits B, C, & D, which are prayed to be taken as part of this petition. He further states that the said Narcissa Scruggs has, ever since the date of the said agreement, remained in the quiet possession and enjoyment of the same, taking, using, and enjoying the rents and income thereof, which rents have been of very great value, amounting to between three and four thousand dollars per annum, and your petitioner insists that he is entitled to have his said debt, and lien on the income of said property, paid out of the said income; and that even if the title to said property and the rights to the rents and income of the same passed to the said railroad company as alledged, that the interest due by the said company on the amount due by them to Mrs. Scruggs for the said property, constitutes income which a court of equity will subject to the payment of petitioner's debt; and that in either event the Memphis & Charleston Railroad Company are bound to pay the amount due your orator out
166 of the money in their hands due Mrs. Scruggs on said property. Petitioner alleges that the said Narcissa Scruggs is a non-resident of the State of Mississippi, and a citizen of the State of Alabama, residing at Huntsville, in that State; that she has, as your petitioner is informed and believes, no other property in the State of Mississippi, except the property mentioned or the money due her therefor, as aforesaid; and that the said property, or the fund due therefor as aforesaid, is the only source to which petitioner can look for satisfaction of his said claim.

The premises considered, your orator prays that the said Narcissa Scruggs and the Memphis & Charleston R. R. Co. be made parties defendants to this cross-bill & be required to answer the same; his lien on the said fund may be recognized and enforced and the said company required to pay the same to your orator, and, if it appears that said Narcissa Scruggs has already received the rents and income from said hotel, that he be subrogated to her claim against said R. R. Co. to an amount sufficient to pay the amount due him on account of his mortgage on the income of said property from said Narcissa Scruggs; and that if it shall be held that Narcissa Scruggs is entitled to interest instead of rent, that the same may be decreed your orator an income, and that such decree may be made as will protect your orator in his rights in

in the premises, and for such further or other relief as your orator may be entitled to.

WALTER & BARR,
Sol. for J. H. Viser.

UNITED STATES OF AMERICA,
167 *Northern District of Mississippi:*

Personally appeared before the undersigned, J. H. Viser, who made oath that the allegations in his foregoing cross-bill, made upon his own knowledge, are true, & those made upon information he believes to be true.

J. H. VISER.

Sworn to & subscribed 20 Dec., 1875.

G. R. HILL, *Clerk.*

EXHIBIT A.

This indenture made and entered into on this 11th day of May, A. D. 1869, by and between John W. Scruggs & Narcissa Scruggs, wife of the said John W. Scruggs, parties of the first part, residing at the town of Huntsville, in the county of Madison, in the State of Alabama, parties of the first part, & A. E. Reynolds and James E. Stewart, of the town of Corinth, in the county of Tishomingo, in the State of Mississippi, of the second part, and James H. Viser, of the county of Lafayette, in the State of Mississippi, of the third part: witnesseth, that the said parties of the first part, for and in consideration of the indebtedness hereinafter mentioned, and also of the sum of ten dollars to them in hand paid by the said parties of the second . the receipt whereof is hereby acknowledged, have this day bargained, sold, and conveyed, and by these presents do bargain, sell, and convey unto the said parties of the second part, their heirs, executors, administrators, and assigns, the following-described property lying, being, and situated in the town of Corinth, in the county of Tishomingo, & State of Mississippi, to wit, all the property known as the Scruggs House, a hotel situated in the town of Corinth, in the southeast angle of the crossing of the Memphis & Charleston Railroad and the Mobile and Ohio Railroad, the lease of the lot and grounds, and all the rights
168 and privileges, with the appurtenances, fixtures, household and kitchen furniture thereto belonging. In trust, however, under the following conditions, to wit: That whereas the said parties of the first part, on the 11th day of May, 1869, executed their joint & several promissory notes to the said party of the third part, one for the sum of five thousand dollars for money loaned to Mrs. Narcissa Scruggs for the purpose of purchasing family supplies & necessaries & wearing apparel for herself and children, payable twelve months after date, and one for the sum of one thousand dollars, payable in monthly installments of eighty-three dollars and thirty-three & one-third cents, which was renewed on the 11th day of May, 1870, which said notes were given for money loaned Mrs. Narcissa Scruggs for the purpose of purchasing supplies or necessaries and wearing apparel for herself and children, and the said parties of the first part, being willing and desirous to secure the punctial payment of the said notes to the said party of the third part, now, therefore, until the 11 day of May, A. D. 1870, said parties of the second part shall permit said parties of the first part to retain the possession, use, and enjoyment of all the above-described property.

It is also hereby stipulated and agreed by the said parties of the first part that they will keep the said property constantly insured, and in case of loss, destruction, or accident they hereby transfer to the said parties of the second part all the policies of insurance and all the insurance money that may become due, or the same shall inure to the benefit of the said party of the third part until he be fully paid. But should the said notes remain unpaid when they shall be due, then the
169 said parties of the second part may and shall, in the execution of the trust hereby taken upon themselves, on request of the said party of the third part, proceed to sell said property, or so much thereof as may be sufficient and necessary to satisfy said notes, at public auction to the highest bidder for cash at the said hotel, after giving notice, according to law, for not less than thirty days, and the proceeds of said sale, after paying the expenses attending the execution of this trust, said parties of the second part shall apply to the payment of said notes, and whatsoever shall remain after paying said expenses and said notes they shall pay over to the said parties of the first part.

In witness whereof the said parties to this deed have hereunto set their hands and affixed their seals the day and date first above written.

(Signed) J. W. SCRUGGS. [L. S.]
N. SCRUGGS. [L. S.]

The interlineation between the 11 & 12 lines on the 2d page made before acknowledging.

THE STATE OF MISSISSIPPI,
Alcorn County:

Personally appeared before me, R. J. Fleming, clerk of the chancery court of the said county, the within named J. W. Scruggs, who acknowledged that he signed, sealed and delivered the foregoing deed, on the day and year therein mentioned, as his act and deed.

Given under my hand and official seal this 15 day of April, A. D. 1871.

R. J. FLEMING, *Clerk.*

THE STATE OF MISSISSIPPI,
County o' Tishcmingo:

170 Personally appeared before me, R. J. Fleming, clerk of the chancery court of said county, the within named N. Scruggs, wife of the said J. W. Scruggs, who, in a previous examination, separate and apart from her husband, acknowledged that she signed, sealed, and delivered the foregoing deed on the day and year therein mentioned, as her voluntary act and deed freely, without any fear, threat or compulsion of her husband.

Given under my hand and seal this 15 day of April, 1871.

R. J. FLEMING, *Clerk.*

THE STATE OF MISSISSIPPI,
County of Alcorn:

I, R. J. Fleming, chancery clerk of the said county, certify that the foregoing deed was received here for record on the 15 day of April, A. D. 1871, and has been duly recorded in deed book 2, page 21.

Given under my hand and official seal at office, Corinth, Miss., this 19 day of April, 1871.

R. J. FLEMING, *Clerk.*

Filed for record April 15th, 1871.

R. J. FLEMING, *Clerk.*

EXHIBIT B.

$5,000.00. HUNTSVILLE, ALA., *May 11th*, 1869.

Twelve months after date we, or either of us, promise to pay J. H. Viser, or order, the sum of five thousand dollars, for money loaned to Mrs. Narcissa Scruggs, for the purpose of purchasing family supplies and necessaries, and wearing apparel for self and her children. Interest at 20 per cent. per annum.

(Signed) J. W. SCRUGGS.
NARCISSA SCRUGGS.

171 EXHIBIT D.

$1,000.00. HUNTSVILLE, ALA., *May 11th*, 1869.

In consideration of the sum of one thousand dollars loaned to Narcissa Scruggs for the purpose of purchasing family supplies and necessaries for herself & her children we promise to pay J. H. Viser one thousand dollars in equal monthly installments of $83.33⅓ each.

(Signed) J. W. SCRUGGS.
N. SCRUGGS.

EXHIBIT E.

$1,000.00. HUNTSVILLE, ALA., *May 11th*, 1870.

In consideration of one thousand dollars loaned to Narcissa Scruggs for the purpose of purchasing family supplies and necessaries for herself, & her children, we promise to pay J. H. Viser, or order, the sum of one thousand dollars in equal monthly installments of $83.33⅓ each.

(Signed) J. W. SCRUGGS.
N. SCRUGGS.

Filed Dec. 21, 1875.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 24th Dec., 1875, the same being a day of the December term of said court in 1875, the following order was entered, to wit:

Order on demurrer.

M. & C. R. R. Co. }
vs. }
NARCISSA SCRUGGS ET ALS. }

In this cause this day was heard the demurrer of the defendant, Narcissa Scruggs, to the amended bill & bill of interpleader of the compl' the Memphis & C. R. R. Co., & same being considered, is in all
172 things overruled & disallowed by the court, all of which is ordered & decreed by the court. It is further ordered & decreed that the parties interplead as to the fund in court deposited with the said interpleader of complainant.

This 22d day of December, 1875.

R. A. HILL,
Judge of U. S. District Circuit Court at Oxford, Miss.

And, to wit, on the 24 day of December, 1875, an answer of Mrs.

Scruggs to the bill of interpleader was filed, which is in the words & figures following, to wit:

Answer of Mrs. Scruggs.

UNITED STATES OF AMERICA,
Northern District of Mississippi:

Circuit court.

MEMPHIS & CHARLESTON RAILROAD CO.
v.
NARCISSA SCRUGGS ET AL. } 215.

The separate answer of Mrs. Narcissa Scruggs to the amended bill and bill of interpleader filed against her and others by the said complainant the Memphis & Charleston Railroad Company, or to so much thereof as she is advised is material and necessary for her to answer, respectfully states unto your honor.

Reserving to herself the benefit of all legal exceptions to the many errors, informalities, & irregularities in the said bill contained, this respondent answering admits that complainant filed its bill in the chancery court of Alcorn Co., Mississippi, against the parties named in the bill and for the purposes therein stated, and that said cause was afterwards removed to this court. She admits that complainant is a corpora-
173 tion duly chartered by the States of Tennessee, Alabama, and Mississippi by acts of their respective legislatures, and that the respondent is a citizen of Huntsville, in the State of Alabama. She admits the dissolution of the injunction and the issuance of the execution and the payment thereon by complainant of the sum of $19,011.23, as stated in said bill.

Respondent admits the offer by complainant to pay the residue of said execution provided complainant was released from a pretended liability upon an attachment or garnishment sued out by J. H. Viser in the United States district court, to which offer, as respondent is informed & believes, William F. Dowd, esq., of the firm of Sale & Dowd, her solicitors, replied that a great part of the debt to said Viser had been paid to him, and that even if any portion was due or any liability therefor incurred by complainant, there was still more than twenty thousand dollars due to respondent by complainant, which was an ample protection, and that no liability had been fixed upon this respondent as the debtor of Viser and none on complainant as garnishee; for which reason said Dowd then & there insisted on the payment of the money, which was refused.

Respondent is informed that said J. H. Viser sued out an attachment & garnishment against complainant in the U. S. district court in a suit against this respondent, seeking to make her liable personally for a note executed by her as surety for her husband while she was a married woman, and upon which she is advised and submits she is not personally liable at all. She denies, on information & belief, that any
174 garnishment was ever issued from the chancery court of Alcorn County against complainant as stated in the bill.

Respondent has no knowledge, information, or belief, as to whether notice was given by the attorney of J. H. Viser personally to complainant of the pendency of said suits; and it is wholly immaterial whether he, a pretended creditor of respondent, gave such notice or not, as it can-

not legally affect the liability of complainant on an execution in the hands of the U. S. marshal.

On information & belief, respondent admits that William F. Dowd, esq., of the firm of Sale & Dowd, solicitors, in the name of the firm, notified complainants before the filing of the original bill in this case, and since that time that the said firm held a lien on the decree for the fees justly due them, as the law authorized them to do.

Respondent denies that soon after the decree on the 9th of July, 1875, she notified the complainant in writing through her son-in-law and agent, E. R. Matthews, not to pay any one, she did not specify said Dowd, any portion of the amount of said decree. But soon thereafter, and before any portion thereof was paid by the complainant, respondent arranged with said Dowd, through her said agent, the fee that said Sale & Dowd were to charge her in said cause, and when the $19,011.23 was paid by the complainant, her said agent paid to said Dowd, for Sale & Dawd, out of said collection, six thousand dollars in part of their fee, and stipulated to pay them $2,000 more when the balance of said decree was collected. The whole amount paid on said execution by
175 complainant to the marshal was paid by the marshal to said Wm. F. Dawd, as a member of said firm of Sale & Dowd, and their receipt was given by said Dowd to the said marshal for the amount. After deducting a part of the fee, as hereinbefore stated, due said Sale & Dowd, said Wm. F. Dowd paid over the balance at once to the agent of this respondent.

Respondent denies that there is or ever has been any contest, controversy, or misunderstanding between her and said Sale & Dowd, in relation to their fee, shee having always been willing to pay the said fee, & never having had any idea of refusing to pay the same, or of defrauding them of any part thereof, and the fee was adjusted as hereinbefore stated.

Respondent further states that the said garnishment in the said U. S. district court was issued by said Viser long before the filing of the original bill in this cause; and she is informed and believes that said notice of lien for fees was given by said Sale & Dowd long before the filing of the said original bill, & before the issuance of said garnishment.

Further answering, respondent states that it appears from the records of the case of Viser v. Scruggs, in said U. S. district court, and from the records of the chancery court of Alcorn County, Miss., to which reference is here made as a part hereof, that the said suit at law in said U. S. court was founded upon a promissory note made by John W. Scruggs in his lifetime to said Viser for $5,000.00, which was signed by this respondent, wife of said Jno. W. Scruggs as his surety. That in the said suit in the chancery court of Alcorn County the iden-
176 tical questions were raised, and it was adjudicated that there was no personal liability on Mrs. Scruggs (this respondent), and that the income only of her separate property could be subjected to the payment of the deed of trust made by her jointly with her said husband.

Respondent further states that the contract by which all the interest of this respondent was transferred to complainant, called in the pleadings in this cause the "contract of submission," was made on the day of February, 1871, and the said deed of trust to J. W. Viser was not executed & acknowledged until the day of April, 1871.

Complainants insist in their original bill that, by the terms of said contract of submission, they became entitled to an account of the rents of said Corinth Hotel, or Scruggs House, and seek to compel respondent to pay the same to them; and in their said bill of interpleader they

aver that a liability exists on respondent to pay J. H. Viser his claim out of said rents, and that there is a contingent liability on them as garnishees.

Respondent insists that there is no personal liability on her to pay anything to said Viser; that if any liability exists, it is to J. H. Viser for the income of her separate property, and no possible liability can exist on complainant, and under no circumstances can the money paid into court in this cause be appropriated to the payment of said Viser, claim, it being a purely personal claim.

Further answering, respondent states that there is still a balance due on said original judgment of $20,000.00 and interest is an ample
177 protection to complainant for any possible or contingent liability to said Viser.

Further answering, respondent insists that said bill of interpleader cannot be engrafted upon or incorporated into the original bill as an amendment thereto. That the matters and things therein contained have no connection with the said original bill, and that the payment or non-payment of the sum paid into court in this cause cannot affect the merits of the orgiual bill.

And now having fully answered, respondent prays that said injunction may be dissolved, and said bill dismissed, and that said money be ordered to be paid over on said execution.

UNITED STATES OF AMERICA,
District of Alabama:

Before me, A. W. McCullough, Commissioner of the United States for said district, this day personally appeared Narcissa Scruggs, who made oath in due form of law that the facts stated in the foregoing answer as of her own knowledge are true, and those purporting to be derived from information of others she believes to be true.

NARCISSA SCRUGGS.

Sworn to & subscribed before me this 1st day of December, 1875.

A. W. McCULLOUGH,
U. S. Commissioner, Nor. Dist. Alabama.

Filed Dec. 24th, 1875.

G. R. HILL, *Clk.*

And to wit, on said 24 day of December, 1875, the answer of W. F. Dowd was filed to said bill of interpleader in the words & figures following, to wit:

178 *Answer of Dowd.*

In the circuit court of the United States for the northern district of Mississippi.

To the Hon'l. R. A. Hill, judge of said court:

The separate answer of Wm. F. Dowd to the amended bill & bill of interpleader filed against him and others by the Memphis & Charleston Railroad Co., or to so much thereof as he is advised is material and necessary for him to answer, respectfully states unto your honor.

This respondent expressly reserving to himself the benefit of all legal exceptions to the many errors and imperfections in said bill contained.

Respondent admits that complainant filed its bill in the chancery

court of Alcorn County against the parties named in the bill for the purposes therein stated, and that the cause was removed to this hon. court.

Respondent admits that complainant is a corporation duly chartered by the State of Tennessee, Alabama, & Mississippi, & that Mrs. N. Scruggs is a citizen of Huntsville, Alabama.

Respondent admits the dissolution of the injunction, the issuance of the execution, and the payment of the sum of $19,011\frac{23}{100}$ dollars as stated.

Respondent admits the offer to pay the residue of said execution, provided complainant was released from a pretended liability upon an attachment or garnishment sued out by J. H. Viser, in the district court of the United States, to which respondent replied that a great portion of said debt had been paid to Viser, and that even if any portion was due, or any liability incurred by complainant, that there was still more than twenty thousand dollars due Mrs. Scruggs from complainant,
179 which was an ample protection, and that no liability had been fixed on Mrs. Scruggs as the debtor of Viser, and none on complainant as garnishee, and insisted on the payment of the money, which was refused.

Respondent is informed that said J. H. Viser sued out an attachment and garnishment against complainant in the district court in a suit against Mrs. N. Scruggs, seeking to make her liable, personally, for a note executed by her as security for her husband while she was a married woman, and upon which respondent believes there is no personal responsibility upon her. But respondent denies, on information and belief, that any garnishment was ever issued from the chancery court of Alcorn County against complainant, as stated in the bill.

Respondent has no knowledge, information, or belief as to whether notice was given by the attorney of J. H. Viser, personally, to complainant of the pendency of said suit, and it is wholly immaterial whether a pretended creditor of Mrs. Scruggs gave such notice or not, as it cannot affect the liability of complainant on an execution in the hands of the marshal.

Respondent admits that one W. F. Dowd, as a member of one firm of Sale & Dowd, attorneys at law and solicitors in chancery, in the name of the firm, notified complainant, long before the filing of the original bill in this cause, and said that that firm held a lien on said decree for the fees justly due them, as the law authorized and justified them in doing.

Respondent has no personal knowledge as to whether or not Narcissa Scruggs, soon after the decree on the 9th of July, 1875, notified
180 complainant on two several occasions not to pay to W. F. Dowd any portion of the decree. On the contrary, respondent is informed that no objection was ever made by said Narcissa Scruggs to the payment of the fees due the firm of Sale & Dowd; that said E. P. Matthews ever informed John B. Sale, one of the firm of Sale & Dowd, that no objections would be made or was made to the payment of the fees due Sale & Dowd, and said Matthews exhibited to respondent an order from Mrs. Scruggs on complainant to pay the amount of money due her. The whole amount paid on said execution to the marshal by complainant was paid by the marshal to respondent as a member of the firm of Sale & Dowd, and took their receipt; after deducting a portion of the fee due them, the remainder was paid over to Mrs. Scruggs.

Respondent, for himself and his firm, never asserted any claim except what is due them for their professional services, and does not believe

that Mrs. Scruggs intended to defraud her counsel of their just and fair fees hardly earned, nor do they desire to handle any of her money. Respondent further denies that there is or can be any controversy between the said Narcissa Scruggs and her counsel, Sale & Dowd.

Respondent further states that the said garnishment in the said district court was issued by said Viser long before the filing of the original bill in this cause, and notice was given complainant by Sale & Dowd of their lien for their fees long before the filing of said original bill.

Further answering, respondent states that it appears from the records of the case of Viser v. Scruggs in the said district court of the
181 United States, and from the records of the chancery court of Alcorn County, to which reference is here made as a part of this answer; that the said suit at law in said district court was founded on a note made by John W. Scruggs in his lifetime to said Viser, for five thousand dollars, which was signed by said Narcissa Scruggs, his wife, and an attachment and garnishment issued thereon; that in said suit in the chancery court of Alcorn County the identical questions were raised, and it was adjudicated that was no personal liability on Mrs. Scruggs, and that only the income of her separate property could be subjected to the payment of the deed of trust made by her jointly with her husband.

Respondent further states that the contract by which all the interest of said N. Scruggs was transferred to complainant, called in the pleadings in this cause the contract of submission, was made on the day of February, 1871, and the said deed of trust to J. H. Viser was not executed and acknowledged until the of April, 1871.

Complainant insists in their said original bill that by the terms of their said contract of submission that it became entitled to an account of the rents of said Corinth Hotel or Scruggs House, and seek to compel Mrs. Scruggs to pay the same to them, and in their said bill of interpleader they aver that a liability exists on Mrs. Scruggs to pay J. H. Viser his claim out of said rents, and that there is a contingent liability on them as garnishees.

Respondents insists that there is no personal liability on Mrs. Scruggs to pay anything to Viser. That if any liability exists it is to J. H. Viser for the income of her separate property, and no possible liability
182 can exist on complainant, and under no circumstances can the money paid into court in this case be appropriated to the payment of the said Viser claim, it being a purely personal claim.

Respondent, further answering, says that there is still a balance due on said original judgment of $20,000, and interest, which is an ample protection to complainant for any possible or contingent liability to said Viser.

Respondent, further answering, insists that said bill of interpleader cannot be incorporated in the original bill as an amendment thereto; that the matters and things therein contained have no connection with said original bill, and that the payment or non payment of the sum paid into court in this cannot affect the merits of the original bill.

Respondent further states that a reasonable fee for labor before the board of arbitrators the obtaining of the contract of submission, the filing of the bill to enforce the award, the attendance on the supreme court of Mississippi, and the argument therein, are worth the sum of 20 % on the amount; that is, eight thousand three hundred dollars; and that the recovery in the case before the chancery court at Corinth, and at this the federal court, involving the whole amount of the decree and

the rents, are reasonably worth five thousand dollars; of this sum respondent has received the sum of six thousand dollars.

Having fully answered, respondent prays to be hence dismissed, with an order that his lien for his fees be enforced, and that the amount
183 be paid over to him.

BARR & WALTER,
Sol's for Sale & Dowd.

Subscribed & sworn to before me this 24 Dec., 1875.

G. R. HILL, *Clerk.*

Filed 24 Dec., 1875.

G. R. HILL, *Clerk.*

And, to wit, on said 24 day of December, 1875, an answer was filed to Viser's cross-bill in the words & figures following, to wit:

Answer to Viser X-bill.

District court. Dec. term, 1875.

UNITED STATES OF AMERICA,
Northern District of Miss.:

MEMPHIS & CH. R. R. Co.
v.
NARCISSA SCRUGGS ET AL.

The answer of N. Scruggs to the cross-bill or petition of J. H. Viser respectfully states unto your honor:

That she admits that she signed a note for $5,000.00 for borrowed money, jointly with her husband, on the 11th of May, 1869, while she was a married woman, and a note for $1,000.00 for 12 mos. interest at 20% per annum, and that said notes have been declared null & void, and ordered to be cancelled as to her.

Respondent admits that on the 24th February, 1871, she made an agreement with the Memphis & Ch. R. R. Co. by which she surrendered her leasehold interest in said property to said Railroad Co., and agreed to surrender possession of the property on the payment of the amount awarded by the arbitrators on the 21st of April, 1871, and that she immediately tendered possession and demanded the amount due
184 her, and has ever since been in readiness to comply with her part of the contract.

Respondent admits that on the 15th of April, 1871, afterwards, she being then a married woman, at the solicitation of her husband executed and acknowledged a deed of trust, purporting to convey the corpus of said property to secure the payment of said notes.

Respondent submits that at that time she had no right, title, or interest to convey, but was only entitled to hold possession until the payment of the money due her, and that said deed of trust conveyed nothing to said Viser or his trustees.

Respondent admits that she filed her bill in the chancery court of Alcorn County against said Viser to set aside said deed of trust, & the same was done by decree, which was affirmed in all things by the supreme court of Miss., except that as security for her husband she might encumber the income of her separate estate.

Respondent insists that the question as to whether she had parted with all the title to said property to the Memphis & Ch. R. R. Co., on the 24th Feb'y 1871, was not decided by the court, and that said Co. insists that they are entitled to the rents & income of said property from that date, and that if that is true said Viser & his trustees could acquire no title to the same.

Respondent states that she cannot be held liable both to said Railroad Co. and to said Viser or his trustees, to pay said rents; she insists that neither are entitled to the same, and that both of them cannot own the said income at the same time.

185 Respondent insists that she did not by virtue of said deed of trust convey to said Viser the judgment and decree of the board of arbitrators or to the decree and interest thereon rendered in her favor on the 2d of Jan'y, 1872.

Respondent insists that said suit is still pending in the chancery court of Alcorn County, to subject the income of said property, and that it is a bar to this suit.

Respondent admits she is a citizen of Alabama, and that she retains possession of said property to be given up to the said Road Co. whenever the money is paid and the contract complied with by said Co.

Respondent avers that all of said debt has been paid, and that the account filed by said Viser is unjust.

Respondent insists that if said Railroad Co. are entitled to said rents & profits from the 24th Feb'y 1871, by virtue of said contract, then this court has no jurisdiction of the subject-matters of said petition or cross-bill.

Respondent denies all the allegations of said bill, in that by consent not herein specially admitted.

Respondent by agreement of counsel reserves the benefit of a demurrer to said bill as fully as if the same were specially pleaded.

And having fully answered, prays to be therein dismissed, &c.

SALE & DOWD,
Sol. for Resp.

Replication & issue in short by consent.

WALTER & BARR,
Sol. for Viser.

Filed Dec. 24th, 1875.

G. R. HILL, *Clerk.*

186 And afterwards, on the 24th day of December, 1875, the same being a day of the December term of said court, A. D. 1875, a decree was made and entered in said cause, which is in the words & figures following, to wit:

Decree for an a/c of rents, &c.

MEMPHIS AND CHARLESTON RAILROAD COMPANY
v.
NARCISSA SCRUGGS ET AL.

This cause came on to be heard this 24th day of December, 1875, before the Hon. Robert A. Hill, presiding in equity in the district court of the United States for the northern district of Mississippi, on the bill of complaint and the exhibits thereto, including the charter of said company as enacted by the legislatures of Tennessee & Mississippi, and

upon the answer of the defendant and exhibits thereto, including the transcript of the record of the cause of Narcissa Scruggs from the chancery court of Alcorn County, Mississippi, and upon the replication regularly filed by complainant to the answer of Narcissa Scruggs, and upon the depositions and other proofs now on file in the cause, and upon the former orders and decrees in this cause, and upon argument of counsel for complainant and defendant; and, after due consideration, the court is of opinion, and doth order, adjudge, and decree, that the complainant is not entitled to vacate the decree of the chancery court of Alcorn County in favor of Narcissa Scruggs on the ground of the original contract between the Memphis & Charleston Railroad Company and John W. Scruggs being illegal and void, as beyond the power of the said company under its charter, because the validity of said contract was conceded by the submission, and was not resisted by said com-
187 pany on the bill of Narcissa Scruggs, and was necessarily involved in the award and decree thereon, and further because the said contract was within the corporate power of said company, but the court is further of opinion and doth adjudge that said company is entitled to have credited on the amount awarded and decreed the reasonable rents which she actually received or might have received by prudent management, or for any period she actually, by herself or agent, occupied the hotel and property at Corinth, from the 11th day of May, 1871, forward to the date of the receiver's taking possession under the former order of this court. If during this period the defendant Narcissa has, by herself or agent, occupied said property, or any part thereof, she will be charged with the reasonable rental of said property during such period; she will also be charged with the rents she or her agents actually received, or by prudent management might have received, and the same will be credited on said decree. She will be allowed for any insurance, or taxes, or reasonable repairs she may have paid on said property since the 11th of May, 1871. The question of the ground rent due compl't before Apr., '71, and also the rent of the property from April 21st, 1871, to May 11th, 1871, is reserved for the final hearing. It is further ordered that the clerk & master of this court take and state an account between the parties and report to the next term of this court; in taking and stating said account he shall inquire and report—

First. What time or period of time, after May 11, 1871, did
188 Narcissa Scruggs, or her agents, occupy said hotel and property, and what was the reasonable rental value of the same during such time or times?

Second. What rents did she or her agent actually receive for the lease of said property for any period or periods of time after the 11th of May, 1871?

Third. What amount of rents did she fail to collect, and what was the cause of such failure? Was it lost by want of prudent management or otherwise?

Fourth. What amount of taxes, insurance, or repairs on said property did she pay after May 11, 1871? In ascertaining the rent and rental value he will *he will* exclude the rent of the personal property and furniture in said hotel.

Fifth. He will deduct the yearly rent, as he ascertains it, from the amount of decree, and interest up to the end of each year, after first deducting the insurance, repairs, and taxes paid by her during such year from the rent.

Sixth. He will deduct from the balance, after crediting all the rents, as above, the amount paid into this court by the complainant at its

proper date. He will also allow the Memphis & Charleston Road credit for the sum of $2,325.00 as of the 28 of June, 1872, alleged in the amen. bill, and not denied. Said sum is a proper credit on the decree as paid by the company. The clerk & master will also report as two separate items the ground rent due, allowing all just credits and the rent of the property from the 21st of April, 1871, to May 11, 1871, as to which all questions are reserved. On this inquiry the clerk & master will consider the testimony now on file, as well as any that may be offered or taken in the mean time.

189 The rents as collected by the receiver shall be applied as a payment on this decree on the receipt of the solicitors of Narcissa Scruggs. Costs of this cause reserved to the final hearing.

R. A. HILL, *Judge.*

And afterwards, to wit, on the 25 day of December, 1875, the same being a day of said December term, the following further decree was made and entered in said cause, to wit:

Decree on bill of interpleader.

In the United States district court, northern district of Miss. December term, 1875.

MEMPHIS & CH. R. R. CO. *vs.* N. SCRUGGS ET AL. } 215.

Be it remembered that this cause came on for hearing on the bill of interpleader between said Narcissa Scruggs and J. H. Viser as to the disposition of the fund heretofore paid into court, amounting to the sum of twenty-five hundred dollars.

And it appearing to the satisfaction of the court that a judgment was rendered on the 20th day of December, 1875, in the said district court, by verdict of a jury, in which said Memphis & Ch. R. R. Co. had been duly summoned as garnishee, for the sum of thirteen hundred & eighty-two dollars & 5 cents, and that said Viser is entitled to the amount of said judgment, to be paid out of said fund, and that Sale & Dowd are entitled to the residue of said fund, it is therefore ordered, adjudged, and decreed that Geo. R. Hill, clerk of this court, shall pay to said J. H.

190 Viser the amount of said judgment, including his costs recovered of N. Scruggs, and the residue of said fund he shall pay to said Sale & Dowd, solicitors for Mrs. N. Scruggs, after deducting the costs taxed on said N. Scruggs in said suit at law.

Ordered, adjudged, and decreed this 25th day of December, 1875.

R. A. HILL, *Judge.*

And afterwards, to wit, on the 10th day of March, 1876, complainant filed its answer to the cross-bill of Viser in the words & figures following, to wit:

Ans. of comp't to X-b of Viser.

To the honorable R. A. Hill, judge of the circuit & district court of the United States for the northern district of Mississippi, at Oxford:

THE MEMPHIS & CHARLESTON RAILROAD CO.
vs.
NARCISSA SCRUGGS ET ALS.

The separate answer of the Memphis & Charleston Railroad Company to the cross-bill of Jno. H. Viser, filed herein against it & others.

Respondent, for answer to so much & such parts of the bill herein as appertains to it, or of which it has knowledge, answering, says that it personally knows nothing of the indebtedness alleged to be due & owing by Mrs. Narcissa Scruggs, or her husband, to said Viser, neither has it any personal knowledge as to its contraction or security, or how evidenced, or when due, & of all these matters it requires full proofs in so far as it in any manner attempts to involve respondent or its interests.

Respondent admits that in the year 1869 Mrs. Narcissa Scruggs
191 claimed to be owner of a certain leasehold & improvements situate in Corinth, Mississippi, & known as the "Scruggs House," with its furniture & fixtures.

Respondent knows nothing personally of the execution by her & her husband of the deed of trust to said Viser to secure the indebtedness referred to; & as this is a matter of record, it demands the production of the original paper or such certified copy as may be proper. Respondent knows nothing of its defective acknowledgment, or that it was unacknowledged afterwards, or of its registration, & asks that proper legal exemplification thereof be made, and respondent then reserves the right to itself to question & defend against the same, if, in the progress of the cause, it should become necessary. Respondent knows personally nothing of the steps taken by Mrs. Narcissa Scruggs to defeat the claim of said Viser, nor of the steps taken by Viser to enforce his claim against her; & as these matters are shown by the bill to be matters of record, it asks for proper proof thereof. Respondent, further answering, shows that said Viser had full notice, or at least was put upon inquiry, when he took his trust deed, that said Narcissa Scruggs only had a leasehold interest in the property, as his trust deed upon the property so described it, &, having so taken it, he is & was chargeable with full notice of the terms of the lease, & respondent's rights thereunder stand expressly subject thereto in all things. Respondent denies that the agreement of 21st February, 1871, was simply an agreement for surrender, but that it was an actual surrender, & that the fixing of amount due by the award on 21st April, 1871, was only the consummation & fixing of the terms, & that by the agreement of February 21st,
192 1871, the rights of both parties as to the lease were terminated, & the only thing necessary to be done was the ascertainment of the value, & when this was fixed the matter was entirely consummated.

Respondent has no interest in the controversy between said Viser & Narcissa Scruggs; does not admit that he owes her anything, or that he ever did, & the original bill in this cause was filed negativeing any such idea & attempting to repudiate any such claim, and to that bill reference is made.

Respondent filed its interpleader herein to test the question as to its liability to said Viser or Narcissa Scruggs, & if on final hearing & determination the court decrees him liable to still further amounts to Narcissa

Scruggs, then respondent is willing that said Viser may contest this matter with Mrs. Scruggs so long as he pleases; but

Respondent now & at all times denies any interest in said Viser to the hotel or its rents & profits, as he took subject to respondent's superior rights, & with full notice of the leasehold interest of said Narcissa Scruggs & the rights of respondent therein.

Respondent further alleges, on advice of counsel, that in no event can said Viser have any claim against respondent; that having taken a trust deed upon the leasehold determinable at the pleasure of respondent, he got no interest after respondent's title became perfected, & could then, if at all, only reach respondent by a bill attacting the debt due, & in that way impounding the interest, he showing by his cross-bill that the supreme court of Mississippi only gave him the right to impound & reach the income. Respondent is informed that for
193 several years said Viser has received the rents from this hotel, which properly belongs to respondent, & for which he is properly accountable to respondent. Respondent has paid about twenty-five thousand dollars to said Narcissa Scruggs, as the papers in this cause will show, & he hopes to be able to show that the rents & profits on the property since April 21st, 1871, will more than eat up the balance already decreed against it; it therefore denies any further liability to said Narcissa Scruggs & any liability whatsoever to said Viser.

Respondent admits that Narcissa Scruggs is a non-resident of Mississippi, residing in Alabama; & that she has no property in Mississippi unless she has some further interest in the claim asserted by her against respondent in reference to the Corinth Hotel or Scruggs House. Respondent does not admit that the copies of notes of trust deed exhibited with the cross bill of J. H. Viser are correct copies or that the account of balance due to him as shown by his bill are true, & of these matters requires the due legal proofs; and now denying all other matters not specially answered & asking the full protection of the court in the premises it prays to be hence dismissed, &c.,

HUMES & PASTON,
Sol's for M. & C. R. R. Co.
THE MEMPHIS & CHARLESTON R. R. CO.
[SEAL OF CO.] By S. R. CRUSE, *Secretary and Treasurer.*

STATE OF TENNESSEE,
County of Shelby, City of Memphis:

Personally appeared before me, Hunsdon Cary, a United States commissioner in & for the State, city, & county aforesaid, duly
194 commissioned & sworn, the Memphis & Charleston Railroad Company by its secretary & treasurer, S. R. Cruse, & make oath that the matters & facts therein above stated as of their own knowledge are true, & those stated on information of others they believe to be true.

S. R. CRUSE.

Sub. & sworn to before me this 7th March, 1876.

In testimony whereof witness my hand & official seal at office in Memphis this 9 March, 1876.

HUNSDON CARY,
U. S. Commissioner Dist. of West Tenn.

Filed M'ch 10th, 1876.

G. R. HILL, *Clerk.*

And afterwards, to-wit, on the 24th March, 1876, a petition was filed in said cause discharge rece'ver, &c., in the words and figures following, to wit:

Petition.

To the Hon. Robert Hill, one of the judges of the United States courts, presiding in the circuit court of the United States for the northern district of Mississippi:

Your petitioner, the Memphis and Charleston Railroad Company, would respectfully show your honor, that there is pending in hon. court, on the equity side thereof, a suit, wherein petitioner is complainant, Narcissa Scruggs and others are defendants. The object of this suit was and is to enjoin the collection of a judgment for something like $32,000.00 with interest, and $1,500.00 rendered by the chancery court of Alcorn County in favor of Narcissa Scruggs against complainant, as principal, and Nelson Price and others as sureties, for the improvements on the property at Corinth known as the Scruggs House or Hotel. Among other grounds set up
195 in said bill now pending by memorial in your honor's said court complainants claimed, that as Narcissa Scruggs had been in possession of the property and improvements under the award and decree in said cause, as mortgagee, from 21st April, 1872, at an annual rental varying from $6,000.00 or more down to $3,600.00, complainant, the present petitioner was entitled to a credit on said judgment of the amount of said rents for each year of her occupation and control; and at a recent term of your honorable court, at Oxford, Mississippi, in December last, your honor on final hearing decided to allow these rents as a credit and directed a reference to the master in chancery in said court to ascertain their amount. Prior to the hearing your honor dissolved said injunction so far as to permit Narcissa Scruggs to collect some $20,000.00 on said judgment, which petitioner paid. Petitioner had previously paid $2,300.00 or more in money, as appears on the record. In addition to these sums said Narcissa has received and is accountable for rents of said property since April, 1872, amounting certainly to not less than $16,000.00, and indeed, according to complainant's estimate, amounting to $20,000.00 or more, so that petitioner insists that the full amount of the judgment has been paid when the credits at their proper dates are allowed, but should the rents only amount to one-half what petitioner claims, still the judgment is nearly all paid, leaving only a balance of not more than four or five thousand dollars The injunction bond originally given by petitioner amounts to more than $50,000.00, with personal sureties on it, to wit, Nelson, Pierce, Brinkley, Wilson, Cossett,
196 Nealy, and Napoleon Hill, worth in actual personalty fifty times the amount. In addition, the Scruggs property is also expressly bound by the decree, worth from $15,000 to $30,000.00 in cash. Petitioner would show your honor that they hold said property as a public eating-house, and they are desirous for the purpose of accommodating the travelling public to put it in first rate repair and make it a first-class eating house at the earliest possible date, and the possession of the rece'ver interferes with the accomplishment of this purpose so long as it continues under his control. The property is now greatly out of repair and is really in danger of going to ruin in the hands of the rece'ver. Besides, the keeping of the rece'ver there is only a source of expense. Moreover, while in the hands of the rece'ver it is impossible to procure first-class hotel keepers to take charge of and run it at a profit and rent. Petition', in possession of it, will immediately stop the waste of delapi-

dation and wasteful wear now hastening it to decay and ruin, by putting it in thorough and permanent repair, and placing it in condition suitable not only for its due preservation but also to fit it for use as a first-class eating house. Petitioner will thereby increase the security for any possible balance which may be found due Mrs. Scruggs, and will also escape the further expense of a rece'ver, and preserve the property, and also greatly increase the annual income and rent of said property. Petitioner refers to and adopts the full record of this cause as now pending in this court as part of this petition. Petitioner insists that under the facts disclosed they are entitled to have said receiver discharged, and the property restored to petitioner, because they
197 insist the necessity for said receiver has passed away and that really it will be for the pecuniary advantage of petitioner, and the greater security of Narcissa Scruggs' claim and judgment, if any remains due thereon, that said receiver be discharged and the property turned over to petitioner. The premises considered, petitioner prays your honor that this motion may be heard at chambers before your hon. on Tuesday, the 4 day of April, 1876, at Oxford, Mississippi, on due notice to solicitors of defendants, and that said rece'ver may be then discharged, and said property put into the hands of petitioner, under such order as may seem meet, just, and equitable in the circumstances.

Petitioner prays for general relief; as in duty bound petitioner will ever pray, &c.

HUMES & PASTON,
Solicitors for Petitioner.

STATE OF TENNESSEE,
Shelby County:

Personally appeared before me this 22 day of March, 1876, S. R. Cruse, treasurer of said Memphis & Charleston Railroad Company, and made oath in due form of law that the facts set forth in the foregoing petition are true to the best of his knowledge, information, and belief.

S. R. CRUSE.

Sworn to and subscribed before me this 22 day of March, 1876.
[L. S.] M. B. FREZENAUT,
U. S. Commissioner.

Filed March 24, 1876.

G. R. HILL, *Clerk.*

And, to wit, on said 24 M'ch, 1876, a motion & order was made & entered in said cause as follows, to wit:

198 *Motion & order.*

District court of the United States at Oxford, Mississippi, northern district of Mississippi.

MEMPHIS & CHARLESTON RAILROAD COMPANY }
v. }
NARCISSA SCRUGGS. }

Motion and order setting motion for hearing.

Motion by complainant to discharge rece'ver and restore the prop-

erty to complainant on the ground that the necessity therefor has ceased by payment of the debt; and, if not its total payment, by its reduction to an inconsiderable amount more than amply secured by the injunction bond and sureties, and because the property needs repairs the receiver cannot make, and it is therefore becoming injured and going to waste and great deterioration of value and its rents decreasing, while its restoration to complainant would secure its repair and preservation, enhance its value, increase its rental value and thus benefit all parties to the suit. This motion shall be heard on the 4th of April, 1876, at chambers, at Oxford, Miss.

This March 24, 1876.

R. A. HILL, *Judge.*

And on said 24 M'ch, 1876, the following notice of said motion was filed in said cause, to wit:

Notice.

Circuit court of the United States at Oxford, Mississippi, for the northern district of Miss.

MEMPHIS & CHARLESTON RAILROAD COMPANY }
v.
NARCISSA SCRUGGS ET AL. }

DAWD, Esq.,
Solicitor of Def'ts:

Complainants will, on the 4th day of April, 1876, at chambers
199 in Oxford, Mississippi, apply and move before the Hon. Robert Hill, one of the judges of the United States courts, holding the circuit of the United States for the northern district of Mississippi, for the discharge of the receiver in the above cause now in possession of the Scruggs House or hotel and property at Corinth, Mississippi, and for the surrender of the same to the complainant under such order as the court may deem just and equitable.

HUMES & PASTON,
Solicitors for Complainant.

Filed March 24, 1876

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 4 day of April, 1876, an affidavit in support of the foregoing motion was filed in said cause, in the words & figures following, to wit:

Affidavit.

Circuit court of the United States, district of North Mississippi.

MEMPHIS & CHARLESTON RAILROAD COMPANY }
v.
NARCISSA SCRUGGS. }

George A. Preston, of Iuka, Mississippi, makes oath that he is a carpenter by trade, and followed it for twelve years, about; that at present he is the roadmaster of the Memphis & Charleston Railroad Company, having charge of the bridges and buildings, purchase of material,

&c., therefor. He is well acquainted with the Scruggs Hotel and property at Corinth, Mississippi, and has made a careful inspection of it in the last four days; that it is seriously out of repair, requiring them at once, and if they be postponed for any length of time the said
200 property will go rapidly to ruin and waste. He further makes oath, that these necessary repairs will cost from seventeen to twenty hundred dollars in money; these repairs are necessary for some essential parts of the hotel, to wit, the dining-room, 6 bedrooms, the kitchen, the front veranda, and the water-closet and hall, and office, and the floors; besides these, from the appearance of the house, it has not been painted, in his opinion, for eight years, and would be greatly benefited by a thorough painting; this would make an additional cost of two hundred dollars, he thinks; and further affiant saith not.

G. A. PRESTON.

Subscribed to and sworn to before me this April 1st, 1876.

[L. S.] HUNSDON CARY,
U. S. Commissioner Dist. of West Tenn.

Filed April 4th, 1876.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 4th day of April, A. D. 1876, the same being a day of a special term of said court held in 1876, an order was made in said cause in the words & figures following, to wit:

Decree discharging rec'iver.

MEMPHIS & C. R. R. Co.
vs.
NARCISSA SCRUGGS.

This cause was this day heard on the motion and petition of complainant for the discharge of the rec'iver and restoration of the property to the complainant, and the petition being heard, and affidavit of George A. Preston and the record and argument of counsel for complainant, and on due consideration thereof the court is pleased to order and
201 decree that the rec'iver be discharged from further custody of the property, & the same be restored to the possession of complainants, provided the present tenant of the rec'iver be permitted to retain possession to the end of the current month under his lease, if he desires to do so.

The complainant is permitted to commence its repairs forthwith, provided it shall be so done and conducted as not to interfere with the use of the premises by the present tenant for this month. But this order is not intended to displace or disturb the lien of def't, Narcissa, for any balance that may be found in her favor against complainant on final hearing on the account heretofore ordered in this cause, nor is it intended to release the sureties on the injunction bond from their liability to her thereon.

The receiver will forthwith render to the clerk of this court a report of his receivership, and turn over and assign to him, for the benefit of whom it may concern, any moneys, notes, accounts for rent, and he shall turn over the policy of insurance on said property to the complainants, who are hereby required and directed to keep said policy alive to the termination of this suit.

Oxford, Mississippi, Apr. 4, 1876, at chambers.

R. A. HILL, *Judge.*

And afterwards, to wit, on the 5th day of June, A. D. 1876, the same being a day of the regular June term of said court, A. D. 1876, an order for continuance was made in said cause, which is in the words following, to wit:

202 *Continuance.*

MEMPHIS AND CHARLESTON R. R. Co. }
v. } 215.
NARCISSA SCRUGGS ET AL. }

Upon application made by the defendant, it is ordered by the court that this cause be continued until the next term of this court.

And afterwards, to wit, at the December term of said court, A. D. 1876, on the 5th day of December, the same being a day of said term, an order was made in said cause, which is in the words & figures following, to wit:

Order renewing order of reference.

MEMPHIS & CHARLESTON R. R. Co. }
v. } 215.
NARCISSA SCRUGGS ET AL. }

In this case the order of reference heretofore entered herein is in all things renewed, & the clerk of this court will make his report to the next term of this court.

And afterwards, to wit, on the 18th day of December, A. D. 1876, the same being a day of the regular December term of said court, A. D. 1876, an order for an account to be taken by the clerk & master of this court was made in said cause, which said order is in the words and figures following, to wit:

203 *Order for an a/c between Viser & Scruggs.*

In the district court of the United States for the northern district of Mississippi, Dec. term, 1876.

MEMPHIS & CHARLESTON R. R. Co. }
v. }
NARCISSA SCRUGGS ET AL. }

This cause coming on for hearing on the bill, answer, exhibits, and the bill of interpleader and answer and exhibits to said bill of interpleader, it is ordered by the court that the cause be referred to G. R. Hill, clerk of this court, as master in chancery, to take and state an account of the amount due by the defendant, Mrs. N. Scruggs, to the said J. H. Viser, and that the said commissioner do take and state the said account, and report the same to this court on or previous to the 22d day of the present month of December, 1876.

R. A. HILL, *Judge.*

And afterwards, to wit, on the 20 day of December, 1876, said master made & filed his report under the foregoing order in the words & figures following, to wit:

Report on % of Viser.

In the district court of the United States for the northern district of Mississippi, December term, 1876.

MEMPHIS & CHARLESTON R. R. Co.
v.
NARCISSA SCRUGGS ET AL.

Master's report.

The undersigned master in chancery, to whom was referred by
204 order of said court, made on the 18th day of Dec., 1876, said cause, to take and state an account of the amount due by defendant, Mrs. N. Scruggs, to the said J. H. Viser, reports as follows:

Mrs. N. Scruggs to J. H. Viser, Dr.

Dec. 1st, 1875. To amt. due as per account of J. H. Viser, filed in this case as Exhibit C to cross-bill	$5,029	46
Dec. 25, 1875. Interest at 10% for 25 days	34	90
	5,064	36
Dec. 25, 1875. By amt. paid Viser by order of this court..	1,304	80
	3,759	56
Dec. 20th, 1876. Interest to date at 10%	370	73
" " " Amt. due J. H. Viser	$4,130	29

Respectfully submitted,

G. R. HILL, *Master.*

Dec. 20th, 1876.

Filed Dec. 20th, 1876.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 29 day of December, 1876, a motion was made & entered in said court as follows, to wit:

Motion.

MEMPHIS & CHARLESTON RAILROAD CO.
v.
NARCISSA SCRUGGS ET AL.

The defendant, Narcissa Scruggs, moves the court to set aside the order granted on the 18th day of December, ordering the clerk,
205 Geo. R. Hill, to take and state an account of the amount due by N. Scruggs to J. H. Viser, and to set aside the report of the clerk, Mr. Geo. R. Hill, for the following reasons:

1. She is a non-resident of the State, and her counsel, W. F. Dowd, was sick in bed & unable to attend the court.

2. Because her counsel, W. F. Dowd, was informed that the accounts would be taken in vacation, subject to exceptions, and with leave to take testimony, &c.

3. Because it has not been the practice of the court or of counsel to take orders or try cases in the absence of opposing counsel, and the

account of Viser was taken & stated by the clerk without any notice to defendant.

DOWD, *For Motion.*

Filed & entered Dec. 22, 1876.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 22 day of December, 1876, the same being a day of said December term, the court made an order on the foregoing motion, in the following words, to wit:

Order on motion.

M. & C. R. R. Co.
v.
MRS. NARCESSA SCRUGGS.

This day came on to be heard the motion entered in this cause to set aside the order made in this cause on the 18 day of December, 1876, referring this cause to the clerk and master to state an account between J. H. Viser and N. Scruggs, & to set aside the report of the master made thereunder; and, after argument of counsel, both for and against said motion, and the court being sufficiently advised, it is ordered that said motion be, and the same is hereby, sustained, and said decree and the report of the clerk thereunder be set aside.

203 And, to wit, on this 23 day of December, 1876, an agreement of counsel was filed in said cause which is in the words & figures following, to wit:

Agreement.

In U. S. court at Oxford, Miss.

MEMPHIS & CHARLESTON RAILROAD CO.
vs.
N. SCRUGGS.

In this cause it is agreed that all of the original papers in the case of Lewis Chapman, bankrupt, together with all the papers having connection therewith, which appear or were brought in the U. S. court at Oxford, may be used in lieu of & to the extent as if properly certified in transcripts. It is agreed that the balance of the rent due by Lewis Chapman & his sureties to wit, J. M. Stone, W. S. Reynolds & Wm. T. Dunn, a suit for which is now pending in the circuit court of Alcorn County, at Corinth, suit being in the name of N. Scruggs for use of Sale & Dowd shall be prosecuted, & the net proceeds be held subject to the decree in this cause when finally determined. It is further agreed that the original vouchers for taxes, repairs, insurance, &c., set up in the deposition of E. R. Matthews as having been paid by him, may be used without formal proof of their authenticity, as the parties reserve the right to show their falsity, if possible. It is further agreed that Mrs. Narcissa Scruggs sold the furniture, &c., in the Scruggs house at Corinth, on the 27th day of April, 1872, for ten hundred & sixty dollars. It is further agreed that the chancery record in the case of J. H. Viser v. N. Scruggs from Alcorn County may be read in evidence so far as competent. All the foregoing evidence being agreed to, to save

207 trouble & expense, & only exceptions reserved thereto for competency or relevancy, this 23rd day of December, 1876.

THOMAS & PASTON,
For Comp't.
W. F. DOWD,
Sol. for Def't N. Scruggs.
BARR & WALTER,
For J. H. Viser.

Filed Dec. 23, 1876.

G. R. HILL, *Clerk.*

And, to wit, on the 23 day of December, 1876, being a day of said December term, an order was made to take account between Viser & Scruggs, as follows, to wit:

Order of reference.

J. H. VISER
vs.
N. SCRUGGS ET AL.

This cause having been heard upon said Viser's cross-bill, answers and exhibits, it is ordered by the court that this cause be referred to G. R. Hill, master in chancery of this court, to take and state an account showing the amount due upon the sum of five thousand dollars loaned by said J. H. Viser to J. W. Scruggs, and to secure which the deed of trust was executed by said N. Scruggs to secure the payment thereof with ten per cent. interest and the payments made thereon, interest to be calculated until such payments were made according to the rules in such cases and report the balance due upon such loan. That in taking such account he be governed by the proof on file and any proof either party may produce before him, and if he deems it necessary may examine either of the parties upon oath; all questions as to the liability of either of the parties to this suit for the payment of such balance are reserved. December 23, 1876.

R. A. HILL, *Judge, &c.*

208 And afterwards, to wit, on the 18 day of May, 1877, the master filed his report between said road & Mrs. Scruggs, in the words & figures following, to wit:

Master's report.

In the district court of the United States for the northern district of Mississippi.

Master's report.

MEMPHIS & CHARLESTON RAILROAD COMPANY
v.
N. SCRUGGS.

The undersigned, to whom was referred the matter of taking and stating an account between the M. & C. R. R. Co. and Mrs. N. Scruggs in the above entitled cause, reports as follows: That he gave notice of the time and place of taking said account to the solicitors of the said par-

ties, copies of which are herewith filed, marked Exhibit A & B; that on the 18th day of May, 1877, at my office in Oxford, Miss., there appearing for the M. & C. R. R. Co., D. H. Paston, esq., and no attorney appearing for Mrs. N. Scruggs, from the proof already on file he states the account as follows:

Memphis & Charleston R. R. Co. in account with Mrs. N. Scruggs.

Apr. 21st, 1871.	To amount of award of this date		$31,666 66
" " 1872.	" interest to this date		1,899 99
" " "	" amount due this date		33,566 65
" " "	By occupation rent 1 year		6,000 00
" " "	To balance due this date		27,566 65
June 28, "	" interest to this date, 2 m. 7 d		308 73
209 June 28, 1872.	To total amount due this date		$27,875 38
" " "	By payment Donegan draft		2,325 75
" " "	To balance due this date		25,549 63
Aug. 1, "	" interest to this date, 1 mo. 3 d		140 51
" " "	" total amount due this date		25,690 14
" " "	By amount paid by Chapman		1,069 55
" " "	To balance due this date		24,620 59
Dec. 1, "	" interest to date, 4 mo		492 41
" " "	" am't due this day		25,113 00
" " "	By occupation from Aug't to Dec. 1, 4 m., $300		1,200 00
" " "	To balance due this date		23,913 00
" 31, 1873.	" interest to date, 13 mo		1,554 34
" " "	" am't due this day		25,467 34
" " "	By Gellemdaler's rent		4,119 00
" " "	To am't due this day		21,348 34
" " 1874.	" interest to this day		1,280 90
" " "	" am't due this day		22,629 24
" " "	By damages awarded by sup. c't, $1,583 33		
" " "	" interest on same from 14 to 31 Dec., 17 days	3 47	
			1,586 80
" " "	To am't due this day		24,216 04
" " "	By rent from J. P. Young		3,600 00
" " "	To bal. due this date		20,616 04
Apr. 1, 1875.	" interest to this date, 8 mo		824 64
" " "	" am't due this date		21,440 68
" " "	By 8 mo. rent, at $150		1,200 00
" " "	To bal. due this date		20,240 68

Apr.	1, 1875.	By payment of 28th Aug. on decree,	$19,217 63	
"	" "	" interest on above payment, 3 days	9 60	
				19,227 23
"	" "	To balance due this date		1,013 45
Sept.	22, "	" interest to this date		3 52
"	" "	" am't due this date		1,016 97
"	" "	By payment on interpleader		2,510 85
210	Sept. 22, 1875.	By bal. due M. & C. R. R. this day		1,493 88
	June 1, 1877.	" interest on bal. to this date		151 36
Jan.	1, 1866.	By am't paid by receiver to Col. Dowd		456 00
June	1, 1877.	" interest to date		38 25
"	" "	" am't due M. & C. R. R. Co		$2,139 49

The undersigned further reports that the notes in the hands of Mrs. Scruggs or her solicitors, Sale & Dowd, that remain due by Chapman and his sureties, have not been taken into the foregoing account, and Mrs. Scruggs is only charged with $1,069.55, the amount of rent actually received from Chapman, whilst Chapman occupied it 4 months at $500 per month, and submits to the court whether these notes, or the difference between $1,069.55 and $2,000, to wit, $930.45, should be charged to Mrs. Scruggs.

The undersigned further reports as to the second item submitted on the question of ground rent as follows:

Mrs. Scruggs to M. & C. R. R. Co.

DR.

To ground rent:		
May 1, 1866, to May 1, 1867		$250 00
" " 1867, " " " 1868		250 00
" " 1868, " " " 1869		250 00
Mar. 30, 1867, 9 cords of wood, at $3		27 00
" " " hauling same, " 2		18 00
		795 00

CR.

Mar.	31, 1871.	By bill for board of hands	$256 84	
	Jan. " 1868.	" discount on freight bill	47 79	
211	Jan. 31, 1869.	Bill for board of hands	14 15	
				319 13
Balance due M. & C. R. R.				475 87
Am't brought down from 1st item				2,139 49
Am't due M. & C. R. R., including a/c for ground rent				2,615 36

All of which is respectfully submitted.
May 18th, 1877.

G. R. HILL,
Master.

EXHIBIT A.

OXFORD, MISS., *May 2d*, 1877.

Col. W. F. DOWD: Notice is hereby given that on the 18th day of May, 1877, at my office, in Oxford, Miss., I will proceed to take and state the account between the Memphis & Charleston R. R. Co. and Mrs. Narcissa Scruggs, in a cause in the district court of the United States for the northern district of Mississippi, between said parties, as ordered by the court.

Respectfully,

G. R. HILL,
Clerk & Master.

Copy of above notice mailed to Col. W. F. Dowd, Aberdeen, Miss., May 2d, 1877.

G. R. HILL, *Clk.*

EXHIBIT B.

OXFORD, MISS., *May 2d*, 1877.

Mess. HUMES & POSTON: Notice is hereby given that on the 18 day of May, 1877, at my office, in Oxford, Miss., I will proceed to take and state the account between the Memphis & Charleston R. R. Co. and Mrs. Narcissa Scruggs, in a cause in the district court
212 of the United States for the northern district of Mississippi, between said parties, as ordered by said court.

Respectfully,

G. R. HILL,
Clerk & Master.

Copy of above notice mailed to Mess. Humes & Poston at Memphis, Tenn., May 2, 1877.

G. R. HILL, *Clerk.*

Filed May 18th, 1877.

G. R. HILL.

And afterwards, to wit, on the 19 day of May, 1877, the clerk & master made and filed in said caus' a statement of account between Mrs. Scruggs & J. H. Viser, which is in the words & figures following, to wit:

Report of master on a/c of Viser.

In the district court of the United States for the northern district of Mississippi.

MEMPHIS & CHARLESTON RAILROAD CO.
vs.
N. SCRUGGS.

Master's report.

The undersigned, to whom was referred the matter of account between Mrs. N. Scruggs and J. H. Viser in the above entitled cause, reports that he gave the said parties notice of the time and place of taking said account. Copies of the notices are herewith filed, marked Exhibit A

& B, and prayed to be taken as part of this report. That on the 17 day of May, 1877, at the office of the undersigned, in Oxford, Miss., J. H. Viser appearing in propria persona, and by his solicitor, H. A. Barr, esq., and Ed. Mayes, esq., appearing for Mrs. Scruggs, said account was stated as follows:

213 *Mrs. N. Scruggs in account with J. H. Viser.*

May	11,	1869.	To note of this date		5,000 00
June	"	"	" one mo. interest		41 66
					5,040 66
"	"	"	By 1st monthly payment		83 33
					4,958 33
July	11,	"	To one mo. interest		41 31
					4,999 64
"	"	"	By 2nd monthly payment		83 33
					4,916 31
Aug.	11,	"	To 1 mo. interest		40 96
					4,957 27
"	"	"	By 3rd monthly payment		83 33
					4,873 94
Sept.	11,	"	To 1 mo. interest		40 61
					4,914 55
"	"	"	By 4th monthly payment		83 33
					4,831 22
Oct.	11,	"	To 1 mo. interest		40 26
					4,871 48
"	"	"	By 5th monthly payment		83 33
					4,788 15
Nov.	11,	"	To 1 mo. interest		39 90
					4,828 05
"	"	"	By 6th monthly payment		83 33
					4,744 72
Dec.	11,	"	To 1 mo. interest		39 53
					4,784 25
"	"	"	By 7th monthly payment		83 33
					4,700 92
Jan'y	11,	1870.	To 1 mo. interest		39 17
					4,740 09
"	"	"	By 8th monthly payment		83 33
					4,656 76

Feb'y	11,	1870.	To 1 mo. interest		38 80
				4,695 56	
"	"	"	By 9th monthly payment		83 33
				4,612 23	
Mar.	11,	"	To 1 mo. interest		38 44
				4,650 67	
"	"	"	By 10th monthly payment		83 33
				4,567 34	
Apr.	11,	"	To 1 mo. interest		38 06
				4,605 40	
"	"	"	By 11th monthly payment		83 33
				4,522 07	
May	11,	"	To 1 mo. interest		37 68
				4,559 75	
"	"	"	By 12th monthly payment		83 33
				4,476 42	
Feb'y	26,	1872.	To interest to this date		801 97
"	15,	"	" am't insurance paid		68 54
"	26,	"	" interest on same to this date		21
				5,347 14	

214 Feb'y 26, 1872, by payments as follows:

Sept.	26,	1871		$150 00
Oct.	"	"		"150 00
Nov.	"	"		"150 00
Dec.	"	"		"150 00
Jan'y	"	1872		"150 00
Feb.	"	"		"150 00
				900 00
				4,447 14
Mar.	"	"	To interest to this date, 1 mo.	37 06
				4,484 20
"	"	"	By payment	150 00
				4,334 20
Nov.	11,	1874.	To interest to date, 2 y. 7 m. 15 d	1,137 70

To insurance paid as follows:

June 8, 1874	60 00
To interest on same to 11 Nov., '74	2 55
Aug. 11, 1874	23 00
To interest on same to 11 Nov., '74	57

Sept. 11, 1874	150 00	
To interest on same to 11 Nov., '74	2 50	
		238 62
		5,710 53

Nov. 11, 1874, by payments as follows:

Oct. 1, 1872	$50 00	
June 30, 1874	$100 00	
Aug. 11, 1874	$300 00	
Sept. 11, 1874	$300 00	
Oct. 11, 1874	$300 00	
Nov. 11, 1874	$300 00	
		1,350 00
		4,360 53
Dec. 5, 1874. To interest to date, 24 days		29 07
		4,389 60
" " " By payment		300 00
		4,089 60
" 25, 1875. To interest to this date		431 68
" 5, " " amt. paid commissioner to rec'r. bill		80 00
" interest on same, 20 days		44
		4,601 72
Dec. 25, 1875. By payment out of fund in court by order, &c.		1,304 80
		3,296 92
June 1, 1877. To interest to this date, 1, 5, 25		489 40
" am't paid for repairs		20 95
June 1, 1877. " am't due J. H. Viser this date		$3,807 27

Respectfully submitted.

G. R. HILL, *Master.*

MAY 18, 1877.

EXHIBIT A.

OXFORD, MISS, *April 7th,*

J. H. VISER, Esq.:

215 DEAR SIR: Your are hereby notified that on the 17th day of May, 1877, at my office in Oxford, Miss., I will proceed to take and state the account ordered by the dist. court of the United States for the northern district of Mississippi, between yourself and Mrs. Narcissa Scruggs.

Respectfully,

G. R. HILL, *Clk. & Master.*

EXHIBIT B.

OXFORD, MISS., *April 7th,* 1877.

Col. W. F. DOWD:

DEAR SIR: You are hereby notified that on the 17th day of May, 1877, at my office in Oxford, Miss., I will proceed to take and state the

account ordered by the dist. court of the United States for the northern district of Mississippi, between J. H. Viser and Mrs. Narcissa Scruggs.

Respectfully,

G. R. HILL,
Clk & Master.

Filed May 19th, 1877.

G. R. HILL, *Clk.*

And afterwards, to wit, on the 5th day of June, 1877, exception were filed to the report of master between Mrs. Scruggs & said road, in the words & figures following, to wit:

Exceptions.

MEMPHIS & CHARLESTON R. R. Co.
v.
NARCISSA SCRUGGS.

The defendant, by her counsel, excepts to the reports of the report of Geo. R. Hill, clerk & master, in taking and stating the account
216 between the parties, and moves the court to set it aside and remand the cause to the master to retake and restate the account under the instructions and directions of the court, for the following reasons:

1. The account was taken & stated without any notice to the counsel of defendant, or to the defendant herself.

2. The clerk & master erred in allowing a credit of $6,000.00 for the use of the property for the year 1871–'2, being wholly unsustained by proof.

3. The clerk & master erred in allowing a credit of $1,200.00 for occupation from Aug. 1st, 1872 to Dec'r 1st, 1872, contrary to law and without proof.

4. The clerk & master erred in allowing a credit of $3,600 rent from J. P. Young when the proof and record shows that that sum was forcibly seized by a receiver under an order of the chancery court of Alcorn county and paid to J. H. Viser.

5. Because the several credits allowed are barred by the statute of limitations, and the remedy, if any, is at law to complainant for the recovery of the money.

6th. Because the several items of credit allowed by the clerk & master have been adjudicated by the State courts of Mississippi, and this court has no jurisdiction.

7. Because the several items of credit allowed for the use and occupation of the property are illegal, because defendant during the 1st year, 1871–2, was a married woman and the premises were occupied by her husband, and because the complainant had no lawful right to force her to become their bailee & tenant.

8. Because said report does not allow the sum of two thousand dollars paid by Matthews, agent for Scruggs, in insurance, taxes,
217 & repairs, and other sums of money proven by the testimony.

9. Because said report is otherwise illegal, informal, and defective.

DOWD,
Sol. for Def't.

Filed June 5th, 1877.

G. R. HILL, *Clerk.*

And, to wit, on said 5th day of June, 1877, exceptions were taken & filed to the report of the master on Viser's claim, which are in the words & figures following, to wit:

Exceptions.

District court U. States, June term, 1877.

MEMPHIS & CHARLESTON R. R. Co.
v.
N. SCRUGGS.

The defendant objects and excepts to the report of Geo. R. Hill, esq., clerk & master, taking and stating an account between J. H. Viser and defendant, Mrs. Scruggs:

1. Because no lawful notice was given of the time & place of stating the account.
2. Because this court has no jurisdiction of the parties or subject-matter of this suit.
3. Because the master erred in not allowing the payments made and credits as specified in the deposition of Matthews.
4. The lien of defendant's counsel on the fund attached in February, 1871, at the time when the arbitration was agreed on and signed, and the lien of Viser on the income, if any, attached in April afterwards, 1871.
5. Because the remedy of said Viser, if any, is at law for money had & received.

218 6. Because the rents & income from the separate property of a married woman cannot belong at the same time to the complainant and to Viser, nor can the corpus of her estate be bound for the debts of the husband, either directly or indirectly.

7. Because said report is otherwise illegal, informal, & defective.
8. Because the record of the suit of Viser v. Scruggs in this district court, and the decree of this court on the bill of interpleader, estop said Viser from setting up his claim.

DOWD,
Sol. for Scruggs.

Filed June 5, 1877.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 6 day of June, 1877, complainant filed exceptions to the report on the claim of Viser in the words & figures following, to wit:

Exceptions.

M. & C. R. R. Co.
v.
N. SCRUGGS ET AL.

Exceptions of M. & C. R. R. Co. to the report of the master upon the claim of J. H. Viser.

Compl's except to said report, & for exceptions say that the master has utterly erred in reporting as due by Mrs. Scruggs anything whatsoever, for the reason that by the judgment rendered in the case of Viser

v. Scruggs on the 20th day of December, 1875, a final judgment was rendered in favor J. H. Viser & against Mrs. N. Scruggs for $1,382\frac{5}{100}$ dollars, in which all the matters set out in the account were involved & were settled, & said record & judgment is ruled upon as conclusive as to all matters appertaining to the same matters; & for further
219 cause of exception says that by decree of this court in this cause entered on the 25th December, 1875, the amount in controversy between these parties was definitely settled & a decree was entered accordingly, which two decrees or judgments are ruled upon as a full disposal of any & all further liability as between these parties.

HUMES & POSTON,
For Comp't.

Filed June 6th, 1877.

G. R. HILL, *Clerk.*

And, to wit, on the same day, the following further exceptions were filed, to wit:

Exceptions.

MEMPHIS & CHARLESTON RAILROAD CO.
v.
NARCISSA SCRUGGS, J. H. VISER, ET AL.

J. H. Viser, respondent in the above entitled cause, excepts to the report of the master in stating the account between the said Narcissa Scruggs and himself, because the said master has allowed as credits on the $5,000.00 note the payments made on the $1,000.00 note, by which payments the said $1,000.00 note was paid off and discharged. He objects to the allowance of the said payments for the reason that they were made in payment of a separate & distinct note from the one whose payment is sought in this case.

H. A. BARR & H. W. WALTER,
Sols. of said Resp.

Filed June 6th, 1877.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 9th day of July, 1877, the same being a day of the regular June term of said court, A. D. 1877, the final decree was made & entered in said cause as follows, viz:

220 *Final decree.*

In the district court of the United States for the northern district of Mississippi. In chancery.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY
vs.
NARCISSA SCRUGGS ET AL. AND J. H. VISER.

This cause came on to be heard this 13th day of June, 1877, before the Hon. Robert A. Hill, judge, &c., presiding in said court, on the original bill; the amended bill filed also as a bill of interpleader and exhibits; and on the answers of defendants, Narcissa Scruggs and J. H. Viser, to the

bills; and upon the cross-bill of J. H. Viser and exhibits, and the answers of the Memphis & Charleston R. R. Co. and of Narcissa Scruggs and exhibits; and upon the reports of the clerk filed in these causes on the 17th of May, 1877, and the exceptions thereto; and upon the depositions, agreements of counsel, and other proofs in the cause, and argument of counsel; and the court being of opinion that the $6,000.00 rent allowed from April 21st, 1871, to April 21st, 1872, is excessive and that the proper amount is $4,500.00, modifies the report thus far. The court further disallows the charge for ground-rent, and the report thus modified leaves a balance in favor of the Memphis & Charleston Railroad Company of one hundred and seventy-nine dollars ($179.00), and the report of the clerk & master thus modified is confirmed. The exceptions of both the complainant J. H. Viser and the def't Narcissa Scruggs to the report showing the balance due J. H. Viser from Narcissa Scruggs are disallowed, & such report is confirmed; which report is in the words and figures following, to wit (reference is here made to said report as hereinbefore inserted, it being a true & correct copy).

221 That Narcissa Scruggs, as principal, and E. R. Matthews and James Matthews, securities upon her refunding bond, pay within ninety days from this date the sum of one hundred and seventy-nine dollars, with interest from date, to the Memphis & Charleston Railroad Company. And that they do pay as such principal and securities, within ninety days from this date, to said Memphis & Charleston Railroad Company, for the use of J. H. Viser, the sum of three thousand eight hundred and seven dollars & 27 cents, being the amount due by said report to said Viser, with 10 per cent. interest from this date, the said sum being adjudged to said Viser on said bond in the name of said company for his use.

It is further decreed that the said Memphis & Charleston Railroad Company and the said Narcissa Scruggs each pay one-half the cost of this suit, except that incurred between the said Narcissa Scruggs and J. H. Viser, and that the said Narcissa do pay all costs of this suit on the interpleader to cross-bill.

It is hereby finally adjudged and decreed that all claims, demand, and interest of Narcissa Scruggs and her mortgagee, said J. H. Viser, are and have been fully satisfied as against the Memphis & Charleston Railroad Company, and the same as a lien or mortgage on the Scruggs Hotel property at Corinth, in the State of Mississippi, are satisfied and extinguished, and said Memphis & Charleston R. R. Company holds the said property fully discharged and free from such lien and encumbrance,

222 and the injunction against the further prosecution of all suits by said Viser or Narcissa Scruggs against said Memphis and Charleston R. R. Company is made final and perpetual.

It is further decreed that the claim for balance due by Chapman and his sureties upon the case by heirs of the Corinth Hotel be collected for the use and benefit and be paid over to the complainant, and that such prosecution of such suit be at the expense and for the benefit of said complainant. The court further decrees that said W. F. Dowd, or Sale & Dowd, have no lien as against said Memphis & Charleston Railroad Company for any balance due for fees. All of which is finally ordered and decreed this the 9th day of July, 1877.

R. A. HILL, [SEAL.]
Judge, &c.

The following pages of this record down to the clerk's certificate to the same contain the depositions and other evidence used on the hearing of said cause, as the same now remain on file therein, to wit:

223 *Notice of filing interrogatories.*

In the circuit court of the United States for the northern district of Mississippi, at Oxford.

THE MEMPHIS & CHARLESTON RAILROAD Company
vs.
NARCISSA SCRUGGS ET ALS.

Mrs. Narcissa Scruggs and her solicitors of record:

Take notice that we have filed in the office of the clerk of this court interrogatories upon which to take the deposition of S. R. Cruse and George Robertson, witnesses, residing at Memphis, Tennessee, whose evidence when taken will be used on the trial of this cause, and that on Monday, the 6th day of December, 1875, we will ask for a commission to issue upon which to said depositions taken, and that we will then cause such depositions to be taken upon interrogatories filed by us, together with such cross-interrogatories as you may see proper to propound & file before the issuance of such commission, such depositions to be used on behalf of complainant.

HUMES & POSON,
Sol's for Memphis & Charleston R. R. Co.

NOV. 22nd, 1875.

A copy of the interrogatories filed by us accompanies this notice.

HUMES & POSTON,
Sol'rs.

We acknowledge service of this notice upon us, with a copy of the same interrogatories, this 24th day of November, 1875, and we waive commission and agree that the depositions may be taken before a U. S. commissioner or a notary public.

SALE & DOWD.
HUMES & POSTON.

224 *Inter'ogatories to Geo. Robertson & S. R. Cruse.*

In the circuit court of the United States for the northern district of Mississippi, at Oxford, Miss.

THE MEMPHIS & CHARLESTON RAILROAD CO.
vs.
NARCISSA SCRUGGS.

Inter'ogatories to be propounde' to George Robertson & S. R. Cruse, witnesses for complainant, whose depositions when taken are to be read on the hearing of this cause.

Inter'ogatory 1st by complainants' solicitors. What is your present residence & occupation, & where have you resided, & at what have you been engaged, since January 1st, 1867?

Inter'ogatory 2nd by same. If in answer to the above you should say you are now or ever were in the employ of the Memphis & Charleston Railroad Company, the complainants, as secretary and treasurer, then state what your duties were while acting in such capacity.

Inter'ogatory 3rd by same. As such secretary & treasurer are or

were, or not, the books of such railroad company & its papers in your possession & control?

Inter'ogatory 4th by same. If in answer to the above you say the books of the Co. are in your possession, then state if the name of the defendant, Narcissa Scruggs, appears upon the same as debtor or creditor. If so, please file an itemized statement of her account, & any vouchers you may have appertaining thereto please file as exhibits 1, 2, 3, 4, &c.; also please state what payments you or either of you have made for her on her account, and what sums you have released that should be credited to her; also state what you know personally about the correctness of her account as made out by you.

225 Interrogatory 5th by same. If you say in answer to interrogatory 4th above that you have any vouchers, please designate the particular items and what they consist of; if notes, drafts, or receipts, please state whose signatures are thereto appended & how you know the facts and signatures.

Interrogatory 6th by same. What payments, if any, have you or either of you made upon process in this cause? Give items and dates, & to whom payments were made.

Interrogatory 7th by same. If you know of any other matters material to the cause of compl't, state the same as fully as if thereto specially interrogated.

HUMES & POSTON,
For Comp't.

Cross-int. to Cruse & Robertson.

MEMPHIS & CHARLESTON R. R. CO.
vs.
NARCISSA SCRUGGS ET AL.

Cross interrogatories by defendant to R. Cruse & Geo. Robertson, witnesses for complainant.

Cross-int. 1. Have you any personal knowledge of the items charged in said account against Mrs. N. Scruggs?

Cross-int. 2. Has complainant ever paid to use James J. Donegan the bill of exchange or rather the contingent order, or to his assignee, the amount of the said order, $2,325, dated June 28, 1872; and if so, where and to whom was it paid, and how was it paid? and please append the original as a part of your answer.

Cross-int. 3. Do you not know the fact, or have good cause to believe, that from the 31 of Jan'y, 1868, to the first of May, 1869, and up
226 to the time of the contract of submission to arbitration by the parties, the hands and employees of complainant were boarded by defendant or at the hotel? and if so, state the amount and all you know of this subject.

Cross int. 4. State anything else you may know that will benefit defendant.

Cross-int. 6. Has the Corinth Hotel, formerly the Scruggs House, been used as an eating-house for the passengers and employees of said company since the 24 Febr., 1871, and since the first of May, 1871, and if yea, how long, how often, and to what extent?

SALE & DOWD,
Sol. for Def't.

UNITED STATES OF AMERICA,
State of Tennessee, County of Shelby, City of Memphis:

I certify that on the 27th day of November, A. D. 1875, before me, Hunsdon Cary, a notary public in and for the county of Shelby and State of Tennessee, duly commissioned and qualified, at my office No. 8 Madison street in said city, county, and State, between the usual hours of business, was produced to and personally came before me S. R. Cruse & Geo. Robertson, witnesses in behalf of the plaintiff to depose in a civil cause depending in the circuit court of the United States for the northern district of Mississippi, wherein the Memphis & Charleston Railroad Company is plaintiff and Narcissa Scruggs is defendant in an action of , and whose testimony is alleged to be material in said civil cause in behalf of the plaintiff. And each of said witnesses being of lawful age and sound mind, and being by me first carefully examined, *continued*, and duly sworn to testify the whole truth and nothing
227 but the truth, touching the matters in controversy in said civil cause, did depose and say as follows, viz:

Answer of Cruse to interrogatories.

In answer to 1st int'y. My present residence is Memphis, Tennessee and occupation, secretary & treasurer Memphis & Charleston Railroad Co. I was secretary and treasurer of the eastern division of the Memphis & Charleston Railroad Company from Jan'y 1st, 1867, to the first of July, 1872, and resided during that time at Huntsville, Ala. From the 1st July, 1872, to the 11th of April, 1874, I was in the service of the Southern Railway Security Company, and resided at Memphis, Tennessee. Since April 11th, 1874, I have been secretary and treasurer of the Memphis & Charleston R. R. Co., with my office and residence at Memphis.

In answer to 2d int'y. I have received and disbursed all the monies of the company since April 11th, 1874. From Jan'y 1st, 1867, to July 1st, 1872, I received and disbursed all the moneys of the eastern division of said railroad. At present I have charge of all the general books of the company, such as cash books, journals, ledgers, stock ledgers, transfer books, cash receipt books, coupon books, and in my office are kept the general accounts of the company, with all the receipts for the disbursements of money.

In answer to 3d int'y. There are now and have been since March, 1875, as stated in my last answer. Prior to that time the books and general accounts of the company, were kept in an auditor's office, and I had no control over them.

In answer to 4th int'y. There is no account on the books of the company in the name of Narcissa Scruggs, except for payments made her, since August 28th, 1875. Before that the account is kept on the books of the company in the name of the Scruggs House. An itemized statement of the account is hereto attached, made out as against Mrs.
228 Narcissa Scruggs, to whom the company looks for payment. I mark the same Exhibit No. 1, and sign my name to it to identify it. The account was kept in the name of the Scruggs House, on the books of the company. The contract with the company for the rent of the ground upon which the hotel stands was made originally with Jno. W. Scruggs, the husband of Narcissa Scruggs, as was also the contract for the sale of the house to the company in certain contingencies. Afterwards Jno. W. Scruggs went into bankruptcy, and Narcissa Scrugg appeared as claimant for his interest in the Corinth Hotel property. s
I

file herewith as Exhibit No. 2 the draft of Narcissa Scruggs upon the company, in favor of James J. Donegan, for $2,325.75, dated June 28th, 1872, which was paid & charged to the account. I also file as Exhibits Nos. 3, 4, & 5, three statements showing respectively $47.79, $256.84, and $14.50, which have been placed to the credit of the account, all of which will be seen from the statement of account Exhibit No. 1. I also file as Exhibit No. 6 a letter from S. W. Donegan, in regard to the draft of $2,325.75. The item charged Mar. 30, '67, is for nine cords of wood furnished the hotel by the railroad company. The ground-rent items, charged in said a/c No. 1, is for the yearly rental of the ground upon which the hotel stood. The draft of $2,325.75 was paid by Geo. Robertson, who was then secretary and treasurer of the western division. The whole of this account as shown in Exhibit No. 1, was made before I came in as sec'y & trea'r of the whole road, and what I state in regard to them is taken from the books of the Co. and the papers submitted to me.

229 *Mrs. Narcissa Scruggs in acct. with Memphis & Charleston R. R. Co.*

DR.

	To ground rent Corinth Hotel, May 1, '66, to May 1, '67	250 00	
	" Int. from May 1, '67, *to* Nov. 1, '75, @ 6 %	127 50	
	" May 1, '67, to May 1, '68	250 00	
	" Interest from May 1, '68, to Nov. 1, '75, @ 6 %	112 50	
	" May 1, '68, to May 1, '69	250 00	
	" Int. from May 1, '69, to Nov. 1, '75	97 50	
June 28, '72.	Draft of Mrs. N. Scruggs on M. J. Wicks, pres't	2,325 75	
	Interest from June 28, '72, to Nov. 1, '75, @ 8 %	621 25	
March 30, '67.	9 cords wood, @ $3.00	27 00	
	Hauling same, @ 2.00	18 00	
	Int. from Mar. 30, '67, to Nov. 1, '75	23 15	
			4,102 65

CREDIT.

Mar. 31, '67.	By bill for board of hands	256 84	
	" Int. to Nov. 1, '75	132 36	
Jan. 31, '68.	" Discount on freight bills	47 79	
	" Int. to Nov. 1, '75	22 31	
Jan. 31, '69.	" Bill for board of hands	14 50	
	" Int. to Nov. 1, '75	5 85	
	" Balance down	3,623 00	
			4,102 65
Nov. 1, '75.	To Balance due Company	$3,623 00	

The above is a correct statement of a/c showing balance due M. & C. R. R. Co. to Nov. 1, 1875, of $3,623.00.

S. R. CRUSE, *Treasurer*,
per H. C. WILTON, *Bookkeeper*.

MEMPHIS, TENN., Nov. 1, 1875.

Exhibit No. 1, S. R. Cruse, Sec'ry & Treas'r.

230 $2,325.75.

HUNTSVILLE, *June* 28, 1872.

When the suit in the supreme court of Mississippi between us for the valuation of the Corinth Hotel property is finally determined, please pay James I. Donegan or order two thousand three hundred and twenty five dollars, with interest from date at 8 pr. ct. pr. annum, & this will be your receipt for the same.

N. SCRUGGS.

To M. J. WICKS, *Pres't M. & C. R. Road, Memphis, Tennessee.*
(Endorsed :) James I. Donegan.

Exhibit No. 2, S. R. Cruse, Sec'y & Treas'r.

TRANSPORTATION DEPARTMENT.

Memphis & Charleston Railroad Company, to W. H. Scruggs, Corinth, Miss., Dr.

1868.
January 31. To discount of 20 % on sundry freight bills paid by him to M. & C. R. R. Co., between dates April, 1867, & Jan'y, 1868, $238. 95 × 20 %..... 47 79

Dollars. Cents.

Conducting transportations.

Drawbacks and overcharges 47 79

231, 232 The above account was duly authorized; has been examined by me, found correct, and is hereby approved.

W. J. ROSS,
Gen'l Sup't.

Exhibit No. 3.—S. R. Cruse, sec'y & treas'r.

TRANSPORTATION DEPARTMENT.

Memphis and Charleston Railroad Company to Scruggs House, Corinth, Dr.

1867.
March 31. To board and lodging furnished Jno. P. Smith, disabled brakesman, from Dec. 6, '66, to M'ch 7, '67, 3 mo's, @ $40.00..... $120 00
" board of nurse from Dec. 6, '66, to Feb'y 15, '67, 2¼ mo's, @ $30.00 ..... 67 50
" board and lodging furnished Geo. Burns, disabled brakesman, from M'ch 11 to 28, 17 days, @ $40.00 mo..... 22 66
" board of nurse for same time & price..... 22 66
" 20 % deductions allowed on fr't bills, as per statement, Jan'y, Feb'y & M'ch, $120.10, 20 % .. 24 02

256 84

Dollars. Cents.

Conducting transportation.

Drawbacks and overcharges 24 02

Loss and damage 232 82

* * * *

Total 256 84

The above account was duly authorized, has been examined by me, found correct, and is hereby approved.

W. J. ROSS, *Gen'l Sup't.*

RECAPITULATION.

Conducting transportation $256 84

* * * * *

Total $256 84

Exhibit No. 4.—S. R. Cruse, sec'y & treas'r.

233 ENGINEER DEPARTMENT.

Memphis and Charleston Railroad Company to Scruggs House, Corinth, Dr.

1869.

Jan'y 31. For meals furnished hands at Corinth & Glendale, when cleaning wrecks, Jan'y 19, 30, & 31 ..... $14 50

Examined and approved.

NILES MERRIWEATHER,
Chief Engineer.

Maintenance of way:

* * * * * * * *

Labor on track 14 50

* * * * * * * *

Total 14 50

Exhibit No. 5.—S. R. Cruse, trea'r.

Letter from S. W. Donegan.

MEMPHIS AND CHARLESTON RAILROAD,
Huntsville Station, Aug. 13th, 1872.

Mr. GEO. ROBERTSON,
Trea'r M. & C. R. R'd:

DEAR SIR: In consequence of the sickness of my father, for the past several days, he has failed to reply to your letter of the 9th inst. You will please find enclosed herewith the d'ft of Mrs. Scruggs on Maj. M. J. Wicks, pres'd't, &c., endorsed by my father, for $2,325.75. When he handed the draft to the Maj. he did not take a receipt for it, and he desires me to request that you please send him one upon receipt of this letter.

234 Yours, very respectfully,

S. W. DONEGAN.

Exhibit No. 6.—S. R. Cruse, sec'y & treas.

I do not know anything further in regard to the correctness of the account than that it is correctly taken from the books of the company, and that those books were correctly kept.

In ans. to 5th int'y. In answer to this question I refer to my last answer, which contains all the information I can give on this head.

In ans. to 6th int'y. On the 28th August, 1875, I paid to J. H. Pierce, United States marshal for the northern district of Mississippi, nineteen thousand two hundred and seventeen & $\frac{63}{100}$ dollars, upon process issued from the U. S. court at Oford, Miss., in favor of Narcissa Scruggs; on the 22d Sept., 1875, I paid to Geo. R. Hill, clerk of U. S. court northern district of Mississippi, twenty-five hundred & ten & $\frac{55}{100}$ ($2,510$\frac{55}{100}$) dollars, also on process from same court, in favor of Narcissa Scruggs.

In ans. to 7th int'y. I have stated all I know in regard to the matter.

In ans. to 1st X-int'y. No.

In ans. t' 2d X-int'y. Yes; it was paid to the said J. J. Donegan himself, in this way: He was indebted to the company as security for a defaulting agent, and the amount of this draft was credited to his account.

In ans. to 3rd X-int'y. I don't know anything about it. My understanding has always been that the employees of the company
235 paid their own board; the company not acknowledging any liability for them whatever.

In ans. to 4th X int'y. I know nothing whatever in favor of defendants.

In ans. to 5th X-int'y. I have no information on the subject whatever, & further deponent saith not.

S. R. CRUSE, *Tr.*

Subscribed and sworn to before me this 27th day of November, 1875.
[SEAL.] HUNSDON CARY,
Notary Public.

Answer of Geo. Robertson.

GEORGE ROBERTSON, the next witness, being of lawful age, and being by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, in answer to the annexed inter'ogatories and cross-inter'ogatories, doth depose and say as follows:

In answer to 1st int'y. I reside at present in Memphis; am not employed in any way now; have resided in Memphis since 1st Jan'y, 1867, and from that date until April 11th, 1864, was sec'y & treasurer of the western division of the Memphis & Charleston R. R. part of the time, and of the whole road from July 1, '72, till April 11, '74.

In ans. to 2nd int'y. My duties were to receive and disburse the moneys of the road, to keep the general books, vouchers, &c., and to keep the record of the action of the board of directors.

In ans. to 3d int'y. Yes; all the general books and papers pertaining thereto were in my custody & control.

In ans. to 4th int'y. The name of Narcissa Scruggs did not appear on the books of the co. Her account was kept in the name of the Scruggs House. Mr. S. R. Cruse has filed as Exhibits Nos. 1, 2, 3, 4, & 5, to his deposition in this cause, statements showing the debits and credits
236 to which the account of the Scruggs House was entitled and got during my term of office. The only payment of money made on the account was the draft of Mrs. Scruggs for $2,325.75, which is Exhibit No. 2 to Cruse' deposition, and to which I refer, and which was

paid by me during my term as treasurer of the road, to wit, on the 28th June, 1872. The rent items charged in Exhibit No. 1 are the yearly rents of the ground on which the Scruggs House stood. The 9 cords of wood was furnished the Scruggs House by the railroad. The three items of credits shown in Exhibits Nos. 3, 4, & 5 to S. R. Cruse' deposition, are all the credits to which the account was entitled during my term of office.

In ans. to 5th int'y. For answer to this question, see my answer to 4th int'y.

In ans. to 6th int'y. I have not made any.

In ans. to 7th int'y. I know nothing more that I now think of.

In ans. to 1st X int'y. As to the draft, Exhibit No. 2, I have personal knowledge. I also know that the charges for ground rent in said account, Exhibit No. 1, are made under a contract. About the charge for wood, I only know it to be correct from reports of another officer of the road, the superintendent.

In ans. to 2d X-int'y. The draft was credited to the account of a defaulting agent, for whom Donegan was security. This was done by me about the time the draft is dated; the original is filed as Exhibit No. 2, to S. R. Cruse' deposition.

In ans. to 3rd 'int'y. I know nothing about any such arrangement. In no case did the railroad company undertake to board its hands and pay their board, except in case of some accident.

In ans. to 4th X-int'y. I know nothing to defendants' benefit.

237 In ans. to 5th X-int'y. I don't know anything about whether it has or not; and further deponent saith not.

GEO. ROBERTSON.

Subscribed & sworn to before me this 27th day of November, 1875.

[SEAL.] HUNSDON CARY,
Notary Public.

I further certify that the foregoing depositions of the said S. R. Cruse and Geo. Robertson were then and there reduced to writing by me in the presence of each of said deponents, respectively, and by them severally subscribed in my presence after the same had been reduced to writing by me and by me read to them, respectively. I further certify that I am not of counsel or attorney to either of the parties to this suit, nor interested in the event of this cause. I further certify that its being impracticable for me to deliver said deposition with my own hand into the court for which it was taken, I have retained the same for the purpose of being sealed up by me and speedily and safely transmitted by the United States mail to the said court for which it was taken, and to remain under my seal until there opened.

I further certify that the fee for taking said deposition, including postage on the same, amounting in all to ten dollars, has been paid to me by the complainant, and that the same is just and reasonable for the service performed.

Given under my hand and notarial seal at Memphis aforesaid this 27th day of November, A. D. 1875.

[SEAL.] HUNSDON CARY,
Notary Public.

Filed Dec. 2, 1875.

G. R. HILL, *Clerk.*

238 STATE OF MISSISSIPPI,
Alcorn County:

Personally appeared before me, W. H. Dodson, a U. S. commissioner in and for the northern district of Miss., at my office in the city of Corinth, Miss., on the 8th day of December, A. D. 1875, Thomas P. Young, sen., a witness for the defendant in the case of the Memphis and Charleston Railroad Co., plaintiffs, and Narcissa Scruggs et al. are defendants, after being duly sworn according to law, testified as follows:

Interrogatories for T. P. Young.

In the circuit court of the United States, northern district of Mississippi.

MEMPHIS & CH. R. R. Co.
vs.
NARCISSA SCRUGGS ET AL.

Interrogatories to be propounded to Thos. P. Young, sen'r, a citizen of Corinth, Miss., and a witness for defendant, whose deposition when taken is to be read in evidence on the trial of said cause.

Int. 1st by defendant Do you reside in the town of Corinth; and, if yea, how long have you lived there?

Int. 2d. Are you acquainted with the Corinth Hotel, formerly known as the Scruggs House, and if yea, what is the annual value of the rent of the hotel, supposing that neither the Memphis and Charleston R. R. Co. nor the Mobile and Ohio R. R. Co. use it as an eating-house for their passengers or employees?

Int. 3d. Have you known said hotel since 24th Feb'y, 1871, and if yea, state whether or not said railroad companies have used said hotel as an eating house for their passengers and employees, or have either of them done so in that time, and if yea, how much and to what extent?

239 Int. 4th. If said hotel were used as an eating house by said railroad co's, and especially by the Memphis & Ch. R. R. Co., what is the annual value of the rent, since 24th Feb'y, 1871?

SALE & DOWD,
Sol's for Defendant.

Cross inter'ogatories for T. P. Young, by Humes & Poston.

X-Q*r*. 1st. Are you not the same J. P. Young whose deposition or evidence was taken Judge Brickell & Reynold & F. L. Pledge, the arbitrators who on that occasion were making the valuation upon the interest of Mrs. Scruggs in this hotel & lease?

X Q. 2d. Is it not the fact that the great bulk of the business done by this hotel is from travelers from both roads who either stop from the trains or lay over awaiting the arrival and departure of trains?

X Q*r*. 3d. Do you know by whom the hotel has been occupied since April, 1871? If so, state it?

X-Q*r*. 4th. Have you yourself rented it; if so, from whom and at what rates?

X-Q*r*. 5th. State if you know what efforts have been made by Mrs. Scruggs or her agent to rent out the hotel, who attended to it for her, & where she and her agent resided during the time since April, 1871.

X Q*r*. 6th. State if you know what efforts were made to secure meals for the trains, or in other words what efforts were made to get the

trains to take meals there. State who made the efforts, to whom & when such application was made. Speak only of your own personal knowledge.

240 X Qr. 7. Is it or not the fact that during the lifetime of Jno. W. Scruggs he gave his personal supervision & control to the business of the hotel.

X Qr. 8th. Is or not the hotel in the same good condition now that it was in April, 1871; if not, how much has it deterio'ated?

X Qr. 9. If you pretend to state anything about the feeding of trains at the Scruggs House since 1871, please, then, confine your statements within own personal knowledge.

X Qr. 10. Are you not the present tenant of Mrs. Scruggs, or have you not been during the past two years?

X Qr. 11. Have you carefully stated only such matter' as were of your own personal knowledge; if not, please now read over your deposition as given, & state what is of your own knowledge, & what is simply hearsay.

HUMES & POSTON,
For M. & C. R. R. Co.

It is agreed that this deposition may be taken on inter'ogatories and cross-inter'ogatories before a United States commissioner or notary, waving commission & notice.

SALE & DOWD,
For Def't.
HUMES & POSTON,
For Comp'l't.

Answer of T. P. Young.

Answer to int. 1st by defendant. I live in the city of Corinth, and have lived there since 1 Jan'y, 1870.

Int. 2. I know nothing of the value of the rent of the hotel of my own knowledge farther back than 1 Jan'y. 1874, altho' I was requested by a party just before the arbitration to offer in his name $6,500 per annum rent, and did make the offer to Col. J. W. Scruggs.

241 Int. 3d. I have known the hotel since 24th Feb'y, 1871; I think Chapman & Gillenwaters both fed trains, but I don't know how many or how long.

Int. 4. I have not had sufficient patronage from the railroads or experience in feeding trains to answer the inter'ogatory fully. I paid $3,600 p'r annum rent for the hotel & furniture for the year 1874. I pay for the year 1875 $1,900 for the hotel alone, the deduction in rent being made on account of their being no furniture rented with the hotel. I don't know what rent was paid per annum previous to 1 January, 1874.

THOS. P. YOUNG.

Ans.

Cross-inter'ogatories for Thos. P. Young by Humes & Poston.

Ans. int'y 1. I am.

Int'y 2d. Travellers stopping over to take the trains has been the principal business of the hotel since I have had charge of it.

Int. 3. Chapman occupied it after Scruggs for a time; I don't know how long after Chapman Gillenwaters occupied it; I don't know when Chapman took possession or the time he left, or the time Gillenwaters commenced; Gillenwaters left the hotel in Dec., 1873.

Int. 4. My son rented it from E. R. Matthews for the year 1874, at $3,600 per annum, and for the year 1875, at $2,000 per annum, after the sale of the furniture, the rent was at the rate of $1,800; the sale of the furniture was, I think, sometime in March, 1875.

Int. 5. I know of no effort made except to my son. E. R. Matthews was the agent who made the contract with him. Mrs Scruggs & her agent both reside in Huntsville, Ala.

242 Int. 6. I know of no efforts made by any one to secure the feeding of trains. While I fed them I done my best to please the travelling public, but never solicited them from the proper persons who controlled the road.

Int. 7. I think he did when here he was often absent with his family at Huntsville, Ala.

Int. 8. It is not; I do not know what sum would put it in as good order.

Int. 9. What I have stated in reference to feeding trains is of my own personal knowledge.

Cross-int. 10. I am the present tenant of Mrs. Scruggs & have been so since Jan'y, 1874.

Int. 11. I have been careful to state nothing but what is of my own personal knowledge.

THOS. P. YOUNG.

Which testimony was reduced to writing by the said witness, and said witness after reading over the same, signed the same in my presence, at the place and on the day in the caption mentioned.

All of which I certify under my hand and official this the 8th day of Dec., 1875.

[SEAL.]

W. H. DODSON,
U. S. Commissioner of Northern Dist. of Miss.

Filed Dec'r 10th, 1875.

G. R. HILL, *Clerk.*

243 And also, on the 10th day of December, 1875, inter'ogatories and answers were file' in said court, in said couse, which are in the words & figures following, to wit:

Interrogatories for E. R. Matthews.

In the circuit court of the United States, northern district of Mississippi.

MEMPHIS & CHAR. R. R. CO.
vs.
NARCISSA SCRUGGS ET AL.

Inter'ogatories to be propounded to E. R. Matthews, a witness for defendant, whose deposition is to be read on the trial of the above-recited cause, a citizen of Huntsville, Ala.

Interrogatory 1st by defendant. Do you know the parties to this suit, and the location and annual rental value of the Corinth Hotel, formerly called the Scruggs House, at Corinth, Miss.?

Int. 2d, by same to same. Who has acted as agent of defendant in the rent of said hotel since the 27th February, 1870? and if you say yo have, state what exertions you have made to rent the same for the best

trains to take meals there. State who made the efforts, to whom & when such application was made. Speak only of your own personal knowledge.

240 X Qr. 7. Is it or not the fact that during the lifetime of Jno. W. Scruggs he gave his personal supervision & control to the business of the hotel.

X Qr. 8th. Is or not the hotel in the same good condition now that it was in April, 1871; if not, how much has it deterio'ated?

X Qr. 9. If you pretend to state anything about the feeding of trains at the Scruggs House since 1871, please, then, confine your statements within own personal knowledge.

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X Qr. 11. Have you carefully stated only such matter' as were of your own personal knowledge; if not, please now read over your deposition as given, & state what is of your own knowledge, & what is simply hearsay.

HUMES & POSTON,
For M. & C. R. R. Co.

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SALE & DOWD,
For Def't.
HUMES & POSTON,
For Comp'l't.

Answer of T. P. Young.

Answer to int. 1st by defendant. I live in the city of Corinth, and have lived there since 1 Jan'y, 1870.

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THOS. P. YOUNG.

Ans.

Cross-inter'ogatories for Thos. P. Young by Humes & Poston.

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Int. 4. My son rented it from E. R. Matthews for the year 1874, at $3,600 per annum, and for the year 1875, at $2,000 per annum, after the sale of the furniture, the rent was at the rate of $1,800; the sale of the furniture was, I think, sometime in March, 1875.

Int. 5. I know of no effort made except to my son. E. R. Matthews was the agent who made the contract with him. Mrs Scruggs & her agent both reside in Huntsville, Ala.

242 Int. 6. I know of no efforts made by any one to secure the feeding of trains. While I fed them I done my best to please the travelling public, but never solicited them from the proper persons who controlled the road.

Int. 7. I think he did when here he was often absent with his family at Huntsville, Ala.

Int. 8. It is not; I do not know what sum would put it in as good order.

Int. 9. What I have stated in reference to feeding trains is of my own personal knowledge.

Cross-int. 10. I am the present tenant of Mrs. Scruggs & have been so since Jan'y, 1874.

Int. 11. I have been careful to state nothing but what is of my own personal knowledge.

THOS. P. YOUNG.

Which testimony was reduced to writing by the said witness, and said witness after reading over the same, signed the same in my presence, at the place and on the day in the caption mentioned.

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[SEAL.]

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Interrogatory 1st by defendant. Do you know the parties to this suit, and the location and annual rental value of the Corinth Hotel, formerly called the Scruggs House, at Corinth, Miss.?

Int. 2d, by same to same. Who has acted as agent of defendant in the rent of said hotel since the 27th February, 1870? and if you say yo have, state what exertions you have made to rent the same for the best

possible price, and append to your answer a detailed account of the net amount collected in each year, and amount paid for repairs, &c.

SALE & DOWD,
Sol's for Def't.

Cross-inter'ogatories by Humes & Poston.

X 1st. What is your age, where do you now reside, and where have you resided since April, 1871?

244 X int. 2d, by same. What is now your occupation, & at what have you been engaged since April, 1871?

X int. 3rd, by same. What is your relationship to Mrs. Scruggs?

X int. 4th, by same. What pecuniary interest have you in this suit? Does or not Mrs. Scruggs owe you? or has she promised you or your wife any portion of the money, if such should be had? If she is indebted to you, state how much.

X int. 5th. Have you ever had any experience in the hotel business, or had the charge or management of any other hotel except the one in controversy; if so, where, and for what length of time?

X int. 6th, by same. Have you, or not, before the taking of this deposition, been duly sworn to tell the truth, the whole truth, & nothing but the truth?

X int. 7th. If, in answer to the 1st inter'ogatory in chief, you say you know anything about the rented value of the Scruggs House, then state how you acquired such knowledge?

X int. 8th. Did you acquire all the knowledge you have of the rental value of the hotel from your experience with the Corinth Hotel? If not, where else?

X int. 9th. Do you own any other property of a like character that is used for a hotel in such a place as Corinth? If so, state where it is, & its rental value per annum.

X int. 10th, by same. If you should say you have ever had any connection with the management of this Scruggs Hotel property

245 since April, 1871, then state what your connection with it was, when it begun and ended.

Inter'ogatory 11th, by same. State when & where you resided & where did Mrs. Scruggs reside during the period of your management of the hotel.

Inter'ogatory 12th, by same. When & where did Jno. W. Scruggs die, and did he or not manage it up to the date of his death?

Inter'ogatory 13th, by same. Have you since your management of the hotel at times kept it under rent? If so, please state how have you rented it, for each and every consecutive year since your control began?

Inter'ogatory 14th, by same. Did you or not take written leases therefor? If so, please file the same as exhibits A, B, C, &c.?

Inter'ogatory 15th, by same. If you did not take written leases please give reasons why you did not, and what tenants occupied it who were not under written lease.

Inter'ogatory 16th, by same. Please give the name and residence, so far as you know, of each & every tenant who occupied the hotel during your management of it.

Inter'ogatory 17th, by same. Please state from what tenants you took security for the rent, & what tenants you did not require security, & the reason why you did not compell all to give security?

Inter'ogatory 18th, by same. Do you, in the management of your own

affairs, loan out your money or lease your property to parties you know nothing about, without security?

246 Inter'ogatory 19th, by same. Did any of the tenants leasing from you remain in the property any length of time after they had not paid up rent? If so, state who such person was, & how long a time, and what was the monthly rent tenant was paying at the time.

Inter'ogatory 20th, by same. Did not one Chapman so remain in the hotel without paying rent, & what was the difference between what he paid and what he contracted to pay?

Inter'ogatory 21st, by same. Had you any written lease with him, and did you take any security from him? If so, state who they were.

Inter'ogatory 22d, by same. Please file with your deposition the written lease from all tenants occupying the hotel since 1871, also all evidence of non-paid rents, such as rent notes, &c., as Exhibits 1, 2, 3, 4, &c.

Inter'ogatory 23rd, by same. If you should say that for the year 1871 Jno. W. Scruggs leased this hotel, then state to whom, and if you have the lease in your possession, or accessible to you, please file same.

Inter'ogatory 24th, by same. If these leases are not in your possession, state where they are; and if in Mrs. Scruggs' possession, please get them and file same as requested, & if you do not please state reasons why.

Inter'ogatory 25th, by same. Have any of these defaulting tenants bankrupted Mrs. Scruggs, for the arrearages of rents? If so, which ones; and if you have bankrupt notices, please file same as Exhibits Z,

247 Z, &c., stating in what court such bankruptcy was effected?

Inter'ogatory 26th, by same. Have you, as such manager, ever sued out any proceedings at law to dispossess defaulting tenants who were in the hotel? if, so, please state when, where, & before what court or officer such proceedings were instituted, and when same were begun & ended. Be careful to as to locate time, place, & parties.

Inter'ogatory 27th, by same. Have you, since your management begun, ever attempted to collect by law the arrearages of rents due by each defaulting tenant? If, so, please state where & in what court or before what officer such proceedings were begun, & with what results.

Inter'ogatory 28th, by same. If you say anything about having paid for any repairs, please state what such repairs were, & file with your deposition vouchers for such expenditures as you have made, & to whom payments were made on $\frac{3}{6}$ thereof.

Inter'ogatory 29th, by same. State whether you have only charged for these repairs what you actually paid out. If not, give the latter figures, showing 1st cost.

Inter'ogatory 30th, by same. Did you employ any one to assist you in obtaining the best price for the hotel property, or did you lease it on your own judgment?

Inter'ogatory 31st, by same. Did you or not advertise it for rent, or advertise for bids; if so, in what paper, or by what methods; if not, in what manner did you give notice that the hotel was for rent? If you advertised it, please file a copy of the advertisement.

248 Inter'ogatory 32nd. Did you or not make or insert any conditions in the leases that the hotel was to be kept in good style, & a good table to be kept?

Inter'ogatory 33rd, by same. Did you ever make an' formal application to the M. & C. R. R. Co. or the M. & O. R. R. Co., in order to get them to make the hotel an eating-station; if so, when and to whom was

the application made, & was it or not in writing? If yea, please file it or a copy with your deposition.

Inter'ogatory 34th, by same. Have you freely, fully, and fairly answered these X interrogatories without fear of displeasure to Mrs. Scruggs? If not, amend your deposition or answer, & state in what particular you have not done compl't justice.

Inter'ogatory 35th, by same. Please file the original books of accounts, & all papers in which you have kept your accounts of the management of the hotel, as Exhibit M, and if you do not, then state why not.

HUMES & POSTON,
Sol'rs for M. & C. R. R.

It is agreed that this deposition may be taken on interrogatories & cross-interrogatories before a U. S. commissioner or notary public, waiving commission & notice.

SALE & DOWD,
For Def'ts.
HUMES & POSTON,
For Compl't.

249 *Deposition of E. R. Matthews.*

UNITED STATES OF AMERICA,
Northern District of Alabama:

Deposition of Elliott R. Matthews, sworn on the 8th day of December, 1875, in said district, under and by virtue of an agreement to take said deposition, endorsed on the interrogatories hereunto attached, made between the complainant and defendant through their solicitors, in the case of the Memphis and Charleston Rail Road Company vs. Narcissa Scruggs et. al. The said E. R. Matthews (who is the identical E. R. Matthews in said interrogatorios named), being first by me, A. W. McCullough, United States commissioner of said district, duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

1. Answer to first interrogatory-in-chief. I know the parties to the suit and the location of the property, and can approximate the annual rental value of the Corinth Hotel inquired after in this interrogatory.

2. Answer to second interrogatory-in-chief. Until his death, which occured in August, 1871, Jno. W. Scruggs, the husband of defendant Narcissa Scruggs, acted as her agent in the control and management of said property since September, 1871, I have acted as her agent in renting said property; and made every effort to rent it at the best prices. In April, 1872, I rented said property to one Lewis Chapman, for five hundred dollars per month, but was never able to collect from him more than two hundred and sixty-seven dollars, and retain possession of it, despite my efforts to oust him, until August, 1872, I believe.

After he left I rented it to J. E. Gillenwaters for about thirteen
250 months, for four thousand one hundred and nineteen dollars,

After he left, I rented it to T. P. Young, jr., for thirty-six hundred dollars per annum. He is now in possession as receiver, and I have collected from him twenty six hundred and forty-nine dollars and seventy-three cents. These are all the rents I have ever collected. I have to paid the annual taxes on said property, amounting in the aggregate to about two thousand dollars.

1 X. Answer to first cross interrogatory. I am thirty years of age,

and reside with the said Narcissa Scruggs, near Huntsville, Alabama, and have done so since April, 1872; I resided at Corinth in the hotel property from September, 1871, to April, 1872.

2 X. Answer to second cross-interrogatory. I had no special occupation except as clerk in my father's and brother's grocery store in Huntsville, for about twelve months, within the period inquired after until recently. I am now in business as a grocery merchant in Huntsville.

3 X. Answer to third cross-interrogatory. I am the son-in-law of Mrs. Scruggs.

4 X. Answer to fourth cross-interrogatory. I have no pecuniary interest in this suit. Mrs. Scruggs does not owe me nor has she promised either my wife or myself any portion of the recovery she may obtain in this suit.

5 X. Answer to fifth cross-interrogatory. I have had no other experience in the hotel business except at Corinth, Mississippi.

6 X. Answer to sixth cross-interrogatory. Before giving my deposition in this cause, I have been sworn to tell the truth, the whole truth, and nothing but the truth.

251 7 X. Answer to seventh cross-inter'ogatory. I acquired my knowledge of the rental value of the property by diligent efforts to rent it at the highest possible price.

8 X. Answer to eighth cross-interrogatory. Yes, I acquired my knowledge in that way only.

9 X. Answer to ninth cross-interrogatory. No; I own no such property anywhere.

10 X. Answer to tenth cross interrogatory. I have stated in my previous answer my entire connection with the property.

11 X. Answer to eleventh cross-interrogatory. During the time I occupied said hotel Mrs. Scruggs was also there, and when I left she left.

12 X. Answer to twelfth cross-interrogatory. Jno. W. Scruggs died at his residence near Huntsville in August, 1871, and my belief is he managed said property up to the time of his death.

13 X. Answer to thirteenth cross-interrogatory. I have hereinbefore fully answered this question.

14 X. Answer to fourteenth X-interrogatory. I took a written lease from Lewis Chapman. I cannot produce it, as it is not in my possession, but it is of record in the chancery court at Corinth, Mississippi. I gave neither Gillenwaters nor Young any written lease. Gillenwaters paid in advance and Young executed his notes payable monthly, which were paid up to the time he was appointed receiver.

15 X. Answer to fifteenth X-interrogatory. This question is fully answered in my reply to the preceeding interrogatory.

16 X. Answer to sixteenth X-interrogatory. I have answered
252 this question in full, except as to the residence of the tenants. I do not know where Chapman and Gillenwaters now reside; Young lives at Corinth, Mississippi.

17 X. Answer to seventeenth X-interrogatory. I took security from Young and Chapman, but did not from Gillenwaters, because he paid in advance.

18 X. Answer to eighteenth cross-interrogatory. No, I do not.

19 X. Answer to nineteenth cross-interrogatory. Chapman was to pay monthly, and remained about four months in possession of the property. His contract was to pay five hundred dollars monthly; the whole amount received from him was ten hundred and sixty-seven dollars. Gillenwaters paid in advance for his entire term—forty-one hundred and nineteen dollars. Young rented at three hundred dollars per month,

giving his notes with security therefor, and was not in default up to the time he was appointed receiver.

20 X. Answer to twentieth X-interrogatory. Chapman remained in possession for four months; was to pay five hundred dollars per month, and paid in all ten hundred and sixty seven dollars.

21 X. Answer to twenty first X-interrogatory. I had a written lease with him and took security from him. I took a mortgage on the hotel furniture, which I had sold him, for about one thousand dollars, and took personal security besides. His securities were J. M. Stone, W. S. Reynolds, & R. T. Dunn.

22 X. Answer to twenty second cross-interrogatory. I have hereinbefore assigned reasons why I cannot furnish the leases. The unpaid notes of Young are subject to his order, as receiver, and I do not feel at liberty to file them with this deposition.

253 23 X. Answer to twenty-third cross-interrogatory. The property was not leased by said Scruggs in 1871, but was run by himself.

24 X. Answer to twenty-fourth X-interrogatory. This question is answered in reply to the preceeding interrogatory.

25 X. Answer to twenty-fifth X-interrogatory. Chapman took the benefit of the bankrupt law, but I do not remember in what court. I think it was in the United States court at Oxford, Mississippi. I have no notices.

26 X. Answer to twenty-sixth cross-interrogatory. I did sue out proceedings to dispossess said Chapman. These proceedings were instituted before one Dodson, a justice of the peace, at Corinth, Mississippi. I do not remember the exact date, but it was in July or August, 1872, and he was dispossessed in August, 1872, I think.

27 X. Answer to twenty-seventh cross-interrogatory. When Chapman went into bankruptcy I got the proceeds of the hotel furniture, amounting, I think, to five hundred and sixty-seven dollars, which is a part of the aforesaid ten hundred and sixty-seven dollars. William F. Dowd has charge of the lease, but whether he has ever instituted suit thereon I do not know.

28 X. Answer to twenty-eighth cross-interrogatory. I have not stated anything about repairs.

29 X. Answer to twenty-ninth cross interrogatory. I have not stated anything about repairs.

30 X. Answer to thirtieth cross-interrogatory. After making enquiry, I acted upon my own judgment.

31 X. Answer to thirty-first cross-interrogatory. I did not advertise it for rent.

32 X. Answer to thirty-second cross-interrogatory. No; I think there were no such conditions.

254 33 X. Answer to thirty-third cross-interrogatory. No; I never made any application of the sort, because I had understood that such applications had been made by Mr. Scruggs without success.

34 X. Answer to thirty-fourth cross-interrogatory. Yes; I have fully, freely, and fairly answered these cross-interrogatories, without fear of displeasure of any one.

35 X. Answer to thirty-fifth cross interrogatory. I did not keep any books of receipts and disbursements. The money I collected I immediately paid to Mrs. Scruggs. The disbursements made by me were simply for the taxes, herein before stated.

ELLIOTT R. MATTHEWS.

Witness:

A. W. McCULLOUGH.

I, A. W. McCullough, the undersigned, United States commissioner for the northern district of Alabama, hereby certify that I am personally acquainted with the said witness, Elliott R. Matthews, and know him to be the identical person named in said interrogatories hereto attached; that he was sworn as above stated, and that his evidence was taken down as near as might be in his own language by William Vaughan, my special deputy, in my presence, and was read over to said witness carefully by me, and by him subscribed in my presence on this the 8th day of December, 1875, at Huntsville, Alabama, in the district above stated; and I further certify that I am not of counsel or kin to any of the parties to said cause, or in any manner interested therein.

[SEAL.] A. W. McCULLOUGH, [SEAL.]
U. S. Commissioner, Nor. Dist. Alabama.

Filed Dec. 10th, 1875.

G. R. HILL, *Clerk.*

255 And afterwards, to wit, on the 3d day of May, 1876, a deed in trust was filed in said cause, which is in the words and figures following, to wit:

Deed in trust from Chapman to Dunn, filed July 29th, 1872.—R. J. Fleming, Clerk.

Lewis Chapman to R. T. Dunn.—Trust deed.

This intenture, made and entered into this the 15th day of July, 1872, between Lewis Chapman of the first part and Edward W. Dunn of the second part and R. T. Dunn of the third part, witnesseth: That for and in consideration of the sum of four dollars, and the trusts hereinafter expressed, the party of the first part bargains, sells, and conveys unto the party of the second part the following-described personal property now in the possession of the party of third part, to wit, all the furniture now in the dining-room, bed-rooms, parlor, kitchen, and the furniture and stock on hand in the bar-room of the Corinth Hotel, also the stores in the store-room of said hotel, to have and hold forever. This deed is nevertheless made in trust, and for the following purposes and none other; that is to say, the party of the third part did become and is now the security of the party of the first part on the following bond and notes, for the payment of rent to Mrs. Narcissa Scruggs: for the sum of five hundred dollars per month, so long as he occupies the Corinth Hotel, for rent, and one note for the sum of one thousand and sixty dollars, payable to the party of the third part & W. S. Reynolds, and endorsed by the party of the third part to . Now if the party of the third part shall be made to pay any or all of the above described indebtedness, then the party of the second part, at the request of the party of the third part, shall take into his possession the above described
256 property, and after giving ten days' notice of time and place of sale, by posting in three public places in the county of Alcorn, shall in front of the court-house door in the town of Corinth, sell said above described property to the highest bidder for cash, or so much thereof as may be necessary to repay to the party of the third part all that said party may pay out on account of his securityship for the party of the first part, with interest at the rate of ten per cent. from such payment until the same is repaid to said party of the third part, and also the party of the second part is authorized and empowered to sell a sufficiency of said property, upon the terms and conditions aforesaid, to pay all the

costs of the execution of this trust, and the remainder of said property to return to the possession of the party of the first part.

Given under hands and seals of the respective parties, on the day and year first above written.

LEWIS CHAPMAN. [SEAL.]
E. W. DUNN. [SEAL.]
ROBT. T. DUNN. [SEAL.]

THE STATE OF MISSISSIPPI,
Alcorn County:

Personally appeared before me, W. H. Dodson, an acting justice of the peace in and for said county, the above named Lewis Chapman, who acknowledged that he signed, sealed, and delivered the foregoing deed, on the day and year therein mentioned, as his act and deed; also appeared E. W. Dunn, who acknowledged he signed, sealed, and accepted the trust therein conferred.

Given under my hand and seal this July 16th, 1872.

W. H. DODSON, *J. P.*

257 STATE OF MISSISSIPPI,
Alcorn County:

I, Robert Henderson, clerk of the chancery court in and for the county and State aforesaid, do hereby certify that the foregoing is a true and copy of a deed in trust from Lewis Chapman to R. T. Dunn, filed and recorded in my office the 29th day of July, A. D. 1872, in record book No. 2, pages 56–57.

Given under my hand and official seal, at office at Corinth, this 29th day of April, 1876.

[SEAL.]

ROBERT HENDERSON,
Chancery Clerk.

Filed May 3d, 1876.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 17th day of May, 1876, a deposition was filed in said cause, which is in the words and figures following, to wit:

Interrogatories for T. P. Young, Sen'r.

In the U. S. district court, Oxford, Miss.

MEMPHIS & CHARLESTON R. R. Co.
vs.
N. SCRUGGS.

Interrogatories to be propounded to Thos. P. Young, sen'r, & Thos. P. Young, jr., separately, in behalf of defendant, at Corinth, Miss.

Int. 1, by defendant. You, Thos. P. Young, sen'r, in your former deposition, stated that you were authorized to offer $6,500 for the rent of the Corinth Hotel, then the Scruggs House. Will you explain whether this offer was for the rent of the hotel, and all its furniture & fixtures,
258 or without them, and was it made with or without the expectation and belief that the hotel would be used by the said R. R. Co. as an eating-house for its trains, and also by the Mobile & Ohio R. R. Co.?

Int. 2, by same to same. What was the annual rental value of said hotel, without the furniture & household & kitchen utensils, bedding, &c., and without the said hotel being used as an eating-house by the said railroad trains for the years 1871, '2, '3, '4, & '5, and taking into

consideration that the railroad company might at any time take possession by paying the award? State to the best of your knowledge and belief your estimate of the annual rental value of said hotel as near as you can, and your means of making such extract.

Int. 3, by same to same. How often did you visit Corinth to look after said hotel during the years 1871 to 1875, inclusive; that is, were your visits seldom or frequent during those years? Was said hotel used as an eating-house by the Memphis & Ch. R. R. Co. for its trains, passengers & employees, or did they make their breakfast, dinner, and supper stands at other places? and state fully all you know on this subject.

WM. F. DOWD,
Sol'r for Defendant.

Cross interrogatories by Humes & Poston, sol'rs, &c., for compl't.

Qr. 1st, by Humes & Poston. At the time you made the offer of $6,500 for the rent of the house, was it upon any express condition that you were to be secured the feeding of trains? Was anything
259 said about such arrangement, or is it not the fact that you simply offered the 6,500.00 and were to take the chances of feeding trains?

Qr. 2nd, by same. Is it or not the fact that at the time trains were feeding there?

Qr. 3d. If you can, state when the trains ceased eating there, and the cause which led to their discontinuance, if you know.

Qr. 4th. State, if you know, whether the lessee of Scruggs kept a first-class eating-house of the hotel after 1871; if so, for what length of time, & when did it cease to be?

Qr. 5th State, if you know, when the Memphis & Charleston & Mobile & Ohio R. R. Co's ceased to use the hotel as an eating-house; and state, if you know (& upon what your knowledge is based) what cause led to their discontinuance of the same as an eating-station by both or either of said roads.

Qr. 6th. Have you any animosity or bad feeling against the Memphis and Charleston R. R. Co., & have you any pecuniary interest in this suit either way?

Qr. 7th. State, if you know, how long the furniture in this hotel had been so used, and state what your knowledge is as to its condition & value in 1871.

Qr. 8th. Was it fine or common furniture—beds, bedding, queensware, &c.—& what quantity was there of it?

Qr. 9th. Has it been sold or valued since 1871? If sold, at what price and when?

Qr. 10th. How did its value when sold compare with its value in 1871 & 1872?

Qr. 11th. To whom was it sold? & if you have a list of it, please produce & file it.

Qr. 12th. Was the furniture that was in the hotel in 1871, when
260 you made the bid of $6,500, the inducement for renting, & what rent would you have offered without the furniture?

Qr. 13th. How many rooms were there furnished with furniture, and what character of furniture was there in the house? Describe it so that it can be valued; also say how many rooms were carpetted, the character of window shades, the character of bureaus, wash-stands, chairs & tables in dining-room.

Qr. 14. Is it or not the fact that you are an old hotel man, and, as such, know the value & character of hotel furniture, &c.? Now, then,

state as near as you can the exact condition of the furniture, and what its proportionate portion of the rent should have been, upon the basis of $6,500.00 rent for the whole.

Qr. 15. What was the character of beds and pillows? Were they cotton, feathers, or shucks, &c.? And, upon the whole, what estimate would you have put upon the furniture in 1871, upon the basis of cash?

Qr. 16th. Do you know of any other matters to the interest of the Memphis & Charleston Railroad? If so, state it the same as if thereunto specifically interrogated.

Qr. 17th. For what length of time did you offer to rent the house at $6,500.00 per annum, and did you make any conditions at all to your offer?

HUMES & POSTON,
Sol'rs for Compl't.

April 26th, 1876.

Deposition of T. P. Young.

Ans. to int. 1st by defend't. The offer was made for the hotel & furniture complete; such was my understanding. Mr. Hill, who m'de the offer, did not inform me what his expectations were as to the feeding of trains.

261 Ans. to int. 2. I cannot answer as to the years 1871, '2, & '3. I paid $3,600 for the year 1874, with the furniture, without the patronage of the road in feeding their trains. In 1875 I paid $1,800 without the furniture. I am paying $1,200 for this year; which I think is enough rent for the hotel alone with the uncertainty of holding possession, &c.

Ans. int. 3. This interrogatory, I think, was not intended for me to answer.

THOS. P. YOUNG, SEN'R.

Ans. to int. 1st for compl't. To the best of my recollection there was nothing said in the offer about feeding trains.

Ans. to int. 2. I don't know yea or nay.

Ans. to int. 3. I cannot.

Ans. to int. 4th. I don't know of my own knowledge.

Ans. to int. 5th. I do not know the time of their quit'ing. My knowledge of the case was what I heard—complaint of the fare.

Ans. to int. 6. I never had any bad feeling towards the management of the M. & C. R. R. individually or collectively; neither have I any pecuniary or other interest in this suit either way.

Ans. to int. 7th. I had no means of knowing anything about the furniture prior to Jan., 1874.

Ans. to int. 8th. The furniture all together, dining room & bed-rooms, was medium in quality when new.

Ans. to int. 9th. It was sold in Feb'y, 1875, at bankrupt sale, & sold very low.

Ans. to int. 10. I cannot say, having, as I said before, never seen it till 1874.

Ans. to int. 11th. To my son. Have no list of it.

262 Ans. to int. 12. The furniture was in the hotel at the time of the offer. I don't know what inducements Mr. Hill had; I only handed his proposition to Col. Scruggs without comment.

Ans. to int. 13th. Don't know; never was in the chambers until Jan., 1874.

Ans. to int. 14th. My hotel career commenced in this house. I never saw any of the bed-room furniture till I rented the house in Jan., 1874.

Ans. to int. 15th. They were such as is used in hotels of the same grade—feather pillows; mat'rasses, shuck & cotton.

Ans. to int. 16th. I do not.

Ans. to int. 17th. I do not remember as to time; there were conditions, but what they were I do not recollect. I had no interest in the matter, and did not charge my memory with the contract.

THOS. P. YOUNG, SR.

UNITED STATES OF AMERICA,
Northern Dist. of Miss.:

I, W. H. Dodson, a United States commissioner in and for the said northern dist. of Miss., do hereby certify that on the 13th day of May, A. D. 1876, at my office in the city of Corinth, in said dist., the deposition of Thos. P. Young, sen., was taken by me; that it was reduced to writing by the said Thos. P. Young, sen., deponent; that it has not been altered while in my hands, nor been out of my possession until first sealed up and delivered in the post-office at Corinth, in the State of Miss., and that I am not interested in the said suit, nor of kin, counsel, or attorney to either of the parties to said suit within this or any other State.

Given under my hand and official seal, at office in the city of Corinth, Miss., on the 13th day of May, A. D. 1876.

[SEAL.] W. H. DODSON,
U. S. *for the North'rn Dist. of Miss.*

Filed May 17th, 1876.

G. R. HILL, *Clerk.*

263 And also on the same day another deposition was filled in said cause, which is in the words and figures following, to wit:

Inter'ogatories for E. R. Matthews.

In the circuit court of the United States for the northern district of Mississippi, at Oxford.

MEMPHIS AND CHARLESTON RAILROAD CO.
vs.
NARCISSA SCRUGGS ET AL.

Interrogatories to E. R. Matthews, a citizen of Huntsville, Ala., & witness for defendant.

Int. 1, by defendant. In your former deposition you stated that you had used your best exertions to rent the Cornith Hotel, formerly known as the Scruggs House, and the amounts you received annually. Will you please state whether you rented the naked hotel, or did you rent it with all the furniture, household and kitchen utensils, room furniture, bedding, &c., &c.; and, if the latter, to whom did said furniture, utensils, &c., belong?

Int. 2, by same to same. You stated in your former deposition that you had used your best exertions to rent said hotel for the highest & best price. Now, please state what was the annual rental value of said hotel without any of said furniture, house and kitchen utensils, &c.,

&c., and without the use of said hotel as an eating-house by the railroads for its passenger and freight trains & employees. Could you have rented it at all, and, if so, for how much, from the year 1871 to 1875, inclusive?

Int. 3, by same to same. Will you please append, if practicable, an itemized account of the moneys paid by you, as agent for Mrs.
264 Scruggs, or by her for taxes, insurance, repairs, and all other expenses on said hotel from the year 1871 to 1875, inclusive?

WM. F. DOWD,
Sol'r for Def't.

Cross-interrogatories by Humes & Poston, for compl'ts.

Qr. 1st. Are you or not the same E. R. Matthews who has heretofore given your deposition in this cause?

Qr. 2d, by same. If you say you kept an itemized statement of taxes, repairs, &c., paid by you, please produce & file with your deposition any and all receipts taken by you for such bills paid by you. If you took no receipts for the same, then state to whom payments were made on these accounts, and where the persons now reside to whom such payments were made.

Qr. 3d, by same. Were the payments you say you made in cash, or have you charged the face of the bills, or only what it cost you in cash? If not, please say what such repairs, taxes, &c., cost you in cash.

Qr. 4th, by same. Did you keep a book of original entry, in which you kept these accounts of repairs, receipts, and disbursements for the hotel? If yea, produce and file it with your deposition as Exhibit A, and designate the pages upon which such entries appear.

Qr. 5th. Were the entries you are called upon to produce and refer to (if made at all) made at the dates of payment by you? If not, when were they made?

Qr. 6th. If you kept no books of account of the receipts and disbursements of this hotel affair, how then do you arrive at the statement you have made out; from memory, or what?

265 Qr. 7th. Did you yourself pay these taxes & for these repairs; if not, who did, and where does such agent now live?

Qr. 8th. If you pretend to furnish any statement of taxes, repairs, &c., paid out by you, please furnish each item separately, and the exact cash cost of each expenditure reported by you, and produce and file all the vouchers you have for such expenditures.

Qr. 9th. If you took out any insurance upon the property, state to whom the policies of insurance were payable in the event of a loss, & file the policies, if in your possession, with your deposition. If not in your possession, name the companies in which such policies were taken out.

Qr. 10th. If you say the hotel and all its furniture, &c., &c., was rented out by you, then state to whom the furniture belonged, and how long it had been used in the hotel at Corinth.

Qr. 11th. Was there any separate renting of the hotel or its furniture, or were they both rented as a whole? If rented separately, & the contract was in writing, please produce and file it.

Qr. 12th. Are you a dealer in furniture or have you ever had any experience in the furniture business?

Qr. 13th. Do you know what the value of this furniture was on April 21st, 1871, or what it originally cost?

Qr. 14th. Had it or not been in use in that hotel since 1865? If for a longer period, then state how much longer.

Qr. 15th. Do you really know how long it had been used as hotel furniture on 21st April, 1871?

Qr. 16th. Has it been since sold or valued; if so, when & at what price, & what was the difference in its quantity when sold & on 21st April, 1871?

Qr. 17th. Did or not the different lessees add largely to its running apparatus, bed linen & clothing, table linen, queensware, &c.,
266 and was not these additions their property? If they did, then please state what additions they did make to the stock of furniture, queensware, &c.

Qr. 18th. Don't you know that the furniture was of inconsiderable value, and would not add anything to the rental value of the hotel?

Qr. 19th. Now do you pretend to say that you are a judge of sufficient experience in such matters as to be able to say what such furniture, &c., as was in that hotel added to its rental value? If yea, please explain how you would arrive at the basis of apportionment.

Qr. 20th. What efforts did you make to rent the hotel? Did you advertise it in the Corinth, Memphis, or Huntsville, or other papers? If so, designate which one & when. Did you stick up posters, or in any other manner give the public notice that the property was for rent?

Qr. 21st. Are the receipts & vouchers you have filed the original ones taken from the parties at the time you made payments? If not, when were the identical vouchers you file obtained by you.

Qr. 22d. Had you a written contract with Chapman? If yea, please produce and file it; if not, state reasons why. If not in possession of yourself, but in possession of Mrs. Scruggs or any agent of hers, please get it & file same as exhibit to your deposition.

Qr. 23d. Have you made a full, true, and candid statement in answer to these X-interrogatories, or have you knowingly withheld or evaded any of them? If so, please now read over them and correct any which you have so evaded, &c.

Qr. 24th. Have you made an earnest and honest endeavor to produce the vouchers & exhibits called for? & who is present beside yourself at the taking hereof?

267 Qr. 25th. What payments, if any, have you or Mrs. Scruggs or her attorney received from the receiver in this cause, since the dissolution of the injunction in the cause last August, 1875?

HUMES & POSTON,
Sol'rs for Compl't.

APRIL 26th, 1876.

Notice to complaint's.

Compl'ts now here give notice to def't Mrs. Scruggs, through her attorney, Col. W. F. Dowd, to produce the originals of all the papers & receipts which the witness deposes to in answer to the above interrogatories, & W. F. Dowd accepts this as full notice, and waiving further formalities of notice, &c.

HUMES & POSTON,
Sol'rs, &c.

In the circuit court of the United States for the northern district of Mississippi, at Oxford.

MEMPHIS & CHARLESTON RAILROAD CO.,
vs.
NARCISSA SCRUGGS ET. AL.

Additional cross-interrogatories for E. R. Matthews by Humes & Poston, sol'rs for comp'ts.

X-question A. Please state whether or not the furniture in the hotel at Corinth, Miss., was or not sold at the beginning of the lease to Lewis Chapman. If so, state at what price, whether on cash or a credit, and what security was taken from him for such purchase.

X-question B. Is it or not the fact that the furniture in said hotel was sold to said Chapman for $1,060.00, endorsed by his note with W. S. Reynolds & R. T. Dunn as securities or endorsers? If not, what was the transaction, and what had said $1,060.00 note to with the sale of the furniture?

268 X Question C. Is it or not the fact that the $6,000 rent agreed to be paid by Chapman was the rent for the hotel property alone, the furniture then belonging to them and not Mrs. Scruggs?

X Question D. Is it or not the fact that the furniture so sold to Chapman was sold as his by decree or under authority of the bankrupt court in February, 1875? If not, state how & when & by what authority it was sold & for what price.

X Question E. Had you or not any security for the furniture debt due you or Mrs. Scruggs by Chapman, except the sureties or endorsers on his note? If so, state what it was. If a deed of trust, state when, by whom, & to whom it was executed. Whether registered or not; & if you have the original in your possession, file it as Exhibit A hereto, and if you know its whereabouts please state it.

HUMES & POSTON,
Sol'rs for Comp't.

Commission & notice waived; let the deposition be taken before a U S. commissioner or other officer authorized to administer an oath on the int. & cross-int.

DOWD,
Solr. for Deft.
HUMES & POSTON,
Sol'rs for Compl't.

Deposition of E. R. Matthews.

Answer of Elliott R. Matthews to the interrogatories and cross-interrogatories propounded to him in the case of Memphis and Charleston Railroad Company, complainant, against Narcissa Scruggs, pending in the district court of the United States for the northern district of Mississippi, at Oxford.

269 To 1st int. in-chief. I rented the naked hotel without the furniture. The furniture was the property of Mrs. Narcissa Scruggs, and I sold the property as her agent to the lessee of the hotel.

To 2d int. in-chief. The annual rental of said hotel, without the furniture & utensils, and without the patronage of the railroads, it is difficult to estimate, as the custom of the hotel was almost exclusively that

of transient persons. I doubt very much whether it could have been rented at all from the year 1871 to 1875, inclusive, without some expectation by the lessees that they would be able to obtain the patronage of the railroads. When I rented it to Lewis Chapman, he informed me that he had the promise of the railroad patronage.

To 3d int. in chief. The itemized account enquired for in this interrogatory was given in my previous deposition taken in this cause, and to which I now refer, as an answer to this interrogatory. The memoranda by which I was enabled to state it is not now accessible to me, and for that reason I cannot now state it, as my memory does not fully serve me in that behalf.

To 1st X interrogatory. I am the same E. R. Matthews whose deposition has been heretofore taken in this cause.

To 2 cross-interrogatory. This cross-interrogatory is answered as fully in reply to the third interrogatory-in-chief as I can now answer. The memoranda and receipts from which said account was itemized in my previous deposition are not now in my possession, and I am not, therefore, able to make them parts of my deposition.

To 3d cross-interrogatory. All the payments made by me were in cash, except the taxes. The corporation & school-taxes were either paid wholly or in part in script, as I now remember, but what the
270 script cost I cannot state, as I have forgotten; nor can I state what proportion less than the whole, if any, was paid in script.

To 4th cross-interrogatory. I kept no book of original entry of the character inquired after in this interrogatory, and therefore cannot file it with this deposition.

To 5th cross-interrogatory. The only papers by which I was enabled to state the account in my previous deposition were the receipts hereinbefore referred to.

To 6th cross-interrogatory. The statement heretofore made out by me was made out from the receipts for the disbursements and which are not *know* in my possession, as I have heretofore stated.

To 7th cross-interrogatory. I made the payments myself.

To 8th cross-interrogatory. I have fully answere' this interrogatory in reply to previous questions.

To 9th cross-interrogatory. No policies of insurance were ever taken out by me on said property.

To 10th cross-interrogatory. The hotel was rented to Lewis Chapman, and when he rented the hotel, he purchased the furniture, but after keeping the hotel five or six months, he surrendered it with the furniture in bankruptcy. But Mrs. Scruggs had a mortgage on the furniture, and this was returned to me, as her agent, and was afterwards sold by the assignee in bankruptcy of said Chapman and the proceeds of said sale were paid to W. F. Dowd, esq., the attorney of Mrs. Scruggs. The furniture had always belonged to her, as I believe, but how long it had been used in the hotel at Corinth I do not know.

To 11th cross-interrogatory. There was no separate renting of
271 the hotel and furniture. The hotel was rented to Chapman, and he bought the furniture, and the final disposition of it is stated in my preceeding answer.

To 12th cross-interrogatory. I am not a dealer in furniture, nor have I had any experience in furniture business.

To 13th cross-interrogatory. I do not know what the furniture originally cost, nor do I know its value in April, 1871. When sold to Chapman it was estimated from between one thousand and eleven hundred dollars.

To 14th cross-interrogatory. I do not know how long it had been in use in the hotel, and cannot further answer this question.

To 15th cross-interrogatory. I do not know.

To 16th cross-interrogatory. The furniture was sold by Chapman's assignee in bankruptcy, as hereinbefore stated. I do not remember what it brought, and I cannot make the estimate that I am requested to make in this cross-interrogatory.

To 17th cross-interrogatory. My recollection is that nothing was added to the furniture beyond what was necessary to supply what was lost in the articles furnished by Mrs. Scruggs.

To 18th cross-interrogatory. No; on the contrary the furniture was of considerable value and did add proportionably to the value of the hotel.

To 19th cross-interrogatory. Without being a judge of the value of furniture, I have a general knowledge of what furniture there was in the hotel, and remember in and about what it was sold for to Chapman, and thus am enabled to state that it was of considerable value used in connection with the hotel.

To 20th cross-interrogatory. I did not advertise said property
272 for rent, either in newspapers or posters, but corresponded with persons who were desirous of renting the property, and visited Corinth in person, and in that way formed what I thought was the approximate rental value of the property.

To 21st cross-interrogatory. This question is hereinbefore fully answered.

To 22d cross-interrogatory. I do not remember to have had any other contract with Chapman than the one hereinbefore referred to. If, however, I am mistaken in this it is not in my possession, nor in the possession of Mrs. Scruggs, but is on file in the chancery court at Corinth, Mississippi.

To 23d cross-interrogatory. I have made as full and candid statement in answer to the cross-interrogatories as I can make, without any attempt at evasion or suppression.

To 24th cross-interrogatory. The vouchers and exhibits called for in the cross-interrogatories are not in my possession, and therefore I have no means of producing them. Mrs. Scruggs' attorney, L. P. Walker, is present at the taking of my deposition.

To 25th cross-interrogatory. The aggregate sum paid by the receiver since the dissolution of the injunction in August, 1875, is I think about the sum of $2,100.

Answer to cross-question A. The furniture was sold as hereinbefore stated to Chapman for between one thousand and eleven hundred dollars. It was sold on a credit and he executed his note with two sureties, viz: W. S. Reynolds and R. T. Dunn. The mortgage hereinbefore referred to was given to secure the rent for the hotel.

Ans. to X Question B. Yes; it is true that the furniture was
273 sold to Chapman as stated in said interrogatory. Whether $1,060 was the exact sum I do not remember, but it was between $1,000 and $1,100.

Answer to X Question C. It is true that the hotel was rented to Chapman for $6,000. The only payment, however, he ever made was the advance payment of $500, and the only other rent ever collected from him was the proceeds of the sale of the furniture in bankruptcy. Chapman's offer was very much larger than that of any one else who proposed to rent the hotel, almost indeed twice as much.

Answer to X Question D. I have hereinbefore answered this question as fully as I am able to do.

Answer to X Question E. I had no other security for the furniture sold to Chapman except the note of Chapman, Reynolds, and Dunn, hereinbefore mentioned.

ELLIOTT R. MATTHEWS.

UNITED STATES OF AMERICA,
Northern District of Alabama:

Before me, A. W. McCullough, a United States commissioner for the said northern district of Alabama, this day personally appeared Elliott R. Matthews, who, after being duly sworn, says that the foregoing answers to the said interrogatories and cross-interrogatories are true as therein stated, and that the same were duly read over to him before the same was signed by him.

ELLIOTT R. MATTHEWS.

Subscribed and sworn to before me the 15th day of May, A. D. 1876.
[SEAL.] A. W. McCULLOUGH,
U. S. Commissioner Northern District of Alabama.

Filed May 17, 1876.

G. R. HILL, *Clerk.*

274 And afterwards, to wit, on the 18th day of May, 1877, an examination of J. H. Viser was filed in said cause, which is in *in* the words and figures following, to wit:

Statement of J. H. Viser.

J. H. VISER
vs.
NARCISSA SCRUGGS.

Before me, G. R. Hill, special master, to whom was referred the matter of taking and stating an account between the parties, on the 17th day of May, 1877, due notice having been given, J. H. Viser, being duly sworn, deposes and says: Up to the 11th day of May, 1870, Mr. Scruggs paid me only one thousand dollars. That amount was to have been paid in monthly instalments of $83.33⅓, and was so paid until the $1,000 note was paid and delivered up. That was all I ever received on either the $1,000 note or the $5,000 up to that date. The first payment made me on the $5,000 note was on the 26th Sept., 1871, which was $150.00. The following additional payments were made on the $5,000 note, to wit:

Oct. 26, 1871	$150 00
Nov. 26, "	150 00
Dec. 26, "	150 00
Jan'y " 1872	150 00
Feb'y 26, "	150 00
Mar. " "	150 00
Oct. 1, "	50 00
June 30, 1874, through Receiver Bell	100 00
Aug. 11, " " " "	300 00
Sept. 11, " " " "	300 00
Oct. 11, " " " "	300 00
Nov. 11, " " " "	300 00
Dec. 5, " " " "	300 00
Dec. 25, 1875, by order of U. S. court	1,304 80

275 I paid the following amounts on insuring the property embraced in the mortgage, to wit:

Feb'y 15, 1872. Am't ins. paid		$68 54
June 8, 1874. " " "		60 00
Aug. 11, 1874. " " "		23 00
Sept. 11, 1874. " " "		150 00
I also paid for repairing building		$20 95
I also paid Receiver Bell's commissions as follows: Commissions on $1,600 Dec. 5, 1875		80 00

Cross-examined by Ed. Mayes, esq., att'y for Mrs. Scruggs:

I did not receive $1,000 in cash on 11th May, 1870, or thereabouts, nor $600 on or about the 1st January, 1870, nor cash about 16th January, 1871, $201.90, nor on the 30th January, 1871, $10.00. The first cash payment made on the $5,000 note was about 26th Sept., 1871, as above stated.

J. H. VISER.

Sworn to and subscribed before me May 17, 1877.

G. R. HILL,
Master

MAY 18, 1877.

Examination of J. H. Viser resumed by H. A. Barr, attorney for J. H. Viser:

The contract for the loan of the $5,000 to Mrs. Scruggs & her husband was made in the town of Oxford, State of Mississippi, with direct reference to the law of the State of Mississippi. The note was drawn in Corinth, Miss., and was sent to Mrs. Scruggs at Huntsville, Alabama, when she signed it, and it was returned to me
276, 277 here at Oxford and the money paid over in Oxford, and the mortgage delivered to me in Oxford, Mrs. Scruggs being at the time a citizen of the State of Mississippi, but only temporarily absent at Huntsville, Ala.

J. H. VISER.

Sworn to & subscribed before me the 18th day of May, 1877.

G. R. HILL, *Clerk.*

Filed May 18, 1877.

G. R. HILL, *Clerk.*

And on the 29th day of May, 1876, a deposition was filed in said cause, which is in the words & figures following, to wit:

Interrogatories for W. J. Ross & C. L. Anderson.

In circuit court of U. S., at Oxford, Miss.

MEMPHIS & CHARLESTON RAILROAD CO.
vs.
NARCISSA SCRUGGS.

Interrogatories & cross-interrogatories to be propounded to W. J. Ross & C. L. Anderson, witnesses for comp'ts in the above cause, whose depositions it is agreed may be taken before any clerk or judge of court of record, notary public, or U. S. commissioner, all formalities of caption

& certificate being wa'ved, and only exceptions for competency & relevancy being reserved.

HUMES & POSTON,
For Comp't.
WM. F. DOWD,
For Def't.

Interrogatory 1, by Humes & Poston. Where do you at present reside & what is your present occupation or employment, and what has been your employment since 1870?

Interrogatory 2nd, by same. If you should say that you have been the superintendent or assistant superintendent of the Memphis &
278 Charleston Railroad since 1870, then state what the duties of such position required of you, & what, if anything, you have had to do with the running of passenger & freight trains on said road since 1870.

Interrogatory 3d by same. Have or not the passenger & other trains on your road made the Scruggs House an eating station for passengers, &c., at any time during the period between the dates of April 1st, 1871, and April 1st, 1876, also between dates of Jan'y 1st, 1869, & April 1st, 1871? If yea, if you can, state the number of trains that have d'ily taken meals there, stating changes when they have occurred; also, please state when they entirely ceased to take meals at said Scruggs House, and the reason why, if you know, the same was discontinued as an eating house.

Interrogatory 4th by same. Do you or not know in what condition as to repairs said Scruggs House was at date of its surrender to the Memphis & Charleston Rail R. Co., about May 1st, 1876? If yea, state in detail its exact condition, as near as you may be able.

Interrogatory 5th by same. Has or has not said Scruggs House been kept since April, 1871, as a first-class eating station? If not, state for what length of time it was not so kept.

Interrogatory 6th by same. State what, if any, efforts were ever made by John W. Scruggs or his wife or his or her attorneys or agents to induce you or the Memphis & Charleston Railroad Co. to continue said station & hotel as an eating station. If you know of any other matters of interest to the cause of complainant, state the same as fully
279 as if specifically interrogated.

HUMES & POSTON,
So'rs for Comp't.

Cross-int. 1st by def't. Did not Chapman, Gillenwaters, Young, and the other occupants of said hotel, during the term enquired of, make repeated attempts to have said hotel used as an eating house? If not to you personally, how do you know that it was made to the company or other officers?

Cross-int. 2. How often did you eat or stay at said hotel as a guest during the time enquired of, and what do you know, of your own knowledge, of the kind of fare, eating-house, &c.?

X-int. 3. Do you not know the fact that the said railroad co. refused to use said hotel as an eating-house after the award of the arbitrators on the 21st of April, 1871, and was not the reason?

X int. 4. Was not Chapman, at the time he occupied the hotel, indebted to said railroad co., and was not said hotel used as an eating-house, during part of his term, for one train or more, until the debt was paid, and then the patronage removed?

X int. 5. Is not said hotel still in the hands of a receiver appointed by U. S. court?

W. F. DOWD,
Sol'r for Def't.

280 *Deposition of C. L. Anderson.*

Answers of C. L. Anderson to the annexed interrogatories and cross-interrogatories.

Answer to interrogatory No. 1. I reside at Germantown, Shelby County, Tennessee; present occupation, sheriff of Shelby County; was, in 1870, supt. western division Memphis & Charleston Railroad, and so continued until July, 1872; then auditor for the Southern Railway Security Company to Feb'y, 1873; superintendent of Memphis City Railway from June, '73, to Feb'y, 1874; elected sheriff Aug. 6th, '74.

Answer to int. No. 2. As division supt., my duties embraced a supervision of the run'ing the Western Division, including the preparation of time tables for government of trains and other matters of detail not easily here enumerated. The running of trains of all kinds was under my control.

Answer int'y No. 3. The passenger trains did stop for meals for passengers at the Scruggs House when the time of passing Corinth suited for meals, and sometimes stopped at times regarded as unsuited, having reference to the hour of the day, when it would suit passengers to partake of a meal, to wit:

Time table No. 25, in effect Nov. 22d, 1868.

Mail train No. 1 passed Corinth 5.18 p. m., and stopped for supper.
Mail train No. 2 passed Corinth at 7.25 a. m.; stopped for breakfast.
Express train No. 3 passed Corinth 5.00 a. m.; too soon for breakfast at that season.
Express train No. 4 passed Corinth at 5.31 p. m.; stopped for supper.

281 This was all the passenger trains run by the company on that part of the road by that time table.

Time table No. 26, in effect Jan'y 10th, 1869, and succeeding time table No. 25.

Mail train No. 1 passed Corinth at 5.18 p. m., and stopped for supper.
Express train No. 3 passed Corinth at 5.00 a. m.; too soon for breakfast at that season.
Mail train No. 2 passed Corinth 7.50 a. m., and stopped for breakfast.
Express train No. 4 passed Corinth at 5.14 p. m., and took supper at Grand Junction 7.26 p. m.
This represents all passenger trains passing Corinth as represented by time table No. 26.

Time table No. 27, in effect Feb'y 4th, 1869, and succeeding time table No. 26.

Express train No. 3 passed Corinth at 2.14 a. m., suiting no one for a meal.
Mail train No. 1 passed Corinth at 5.52 p. m., passengers by which had dined at Grand Junction at 3.30 p. m., and hence no time allowed for supper for them at Corinth.

Mail train No. 4 passed Corinth at 6.50 a. m., and breakfasted at Grand Junction at 8.50 a. m.

Express train No. 2 passed Corinth at 5.30 p. m., and stopped for supper.

This represents all the passenger trains run passing Corinth at that time, as provide' by this (No. 27) time table.

Time table No. 28, in effect May 3rd, 1869, and succeeding time table No. 27.

Express train No. 3 passed Corinth at 6.33 a. m., and stopped for breakfast.

282 Mail train No. 1 passed Corinth at 5.52 p. m., and did not stop for supper, going to Iuka at 6.25 p. m. for it on account of having dined at Grand Junction at 3 p. m.

Mail train No. 2 passed Corinth at 8.25 a. m., and stopped for breakfast.

Express train No. 4 passed Corinth at 5.24 p. m., & run to Grand Junction, 7.32 p. m., for supper.

This is all the passengers trains represented on time table No. 28.

Time table No. 29, in effect May 21st, 1869, and succeeding time table No. 28.

Mail train No. 1 passed Corinth at 5.22 p. m., too soon for supper, after a late dinner at Grand Junction, and run to Iuka for it at 6.25 p. m.

Express train No. 3 passed Corinth at 6.33 a. m., and stopped for breakfast.

Mail train No. 2 passed Corinth at 8.25 a. m., and took breakfast.

Express train No. 4 passed Corinth at 5.26 p. m., too soon for supper, & run to Gr. Junction, 7.32 p. m., for it.

This is all the passenger trains passing Corinth as shown in time table No. 29.

Time table No. 30, in effect May 27th, 1869, succeeding time table No. 29.

Express train No. 3 passed Corinth 6.33 a. m., and stopped for breakfast.

Mail train No. 1 passed Corinth 5.22 p. m., too soon for supper, for same reason as in previous time table.

Mail train No. 2 passed Corinth 8.25 a. m , and took breakfast.

Express train No. 4 passed Corinth at 5.26 p. m., too soon for supper, and run to Grand Junction for it at 7.32 p. m.

283 This is all the passenger trains passing Corinth as shown by time-table No. 30.

Time-table No. 31, in effect Oct. 25, 1869, succeeding time-table No. 30.

Express train No. 3 passed Corinth at 6.33 a. m., and took breakfast.

Mail train No. 1 passed Corinth at 5.24 p. m., and stopped for supper, for want of suitable hours elsewhere, although the passengers had dined at Gr. Junction at 3.05 p. m.

Mail train No. 2 passed Corinth at 8.25 a. m., and took breakfast.

Express train No. 4 passed Corinth at 5 21 p. m., running to Gr. Junction for supper, two hours later.

This is all the passenger trains passing Corinth as shown in the time-table No. 31.

Time-table No. 31, revised, in effect Oct. 30, 1869.

Makes no changes as to meals at Corinth, as above stated in original time-table No. 31.

Time table No. 32, in effect Nov. 15, 1869, succeeding time table No. 31, revised.

Express train No. 3 took breakfast at Corinth at 6.33 a. m.
Mail train No. 1 took supper at Corinth at 5.24 p. m.
Mail train No. 2 took breakfast at Corinth at 9.05 a. m.
Express train No. 4 passed Corinth at 5.21 p. m., & supper at Grand Junction at 7. 32. p. m.
This is all the passenger trains passing Corinth, as shown in time-table No. 32.

Time table No. 33, in effect Dec. 12, 1869, succeeding time-table No. 32.

Express train No. 3 passed Corinth at 6.40 a. m., & stopped for breakfast.
Mail train No. 1 passed Corinth at 5.24 p. m., and took supper after a late dinner (3.05 p. m.) at Gr. Junction.
284 Mail train No. 2 passed Corinth at 9.00 a. m., & took breakfast.
Express train No. 4 passed Corinth at 5.00 p. m., & took supper.
This is all the passenger trains passing Corinth as shown in time-table No. 33.

Time-table No 34, in effect Feb'y 6, 1870, succeeding time-table No. 33.

Express train No. 3 passed Corinth at 6.40 a. m., & took breakfast.
Mail train No. 1 passed Corinth at 5.24 p. m., & took supper.
Mail train No. 2 passed Corinth at 9.00 a. m., & took breakfast.
Express train No. 4 passed Corinth at 5.00 p. m., & took supper.
This is all the passenger trains passing Corinth as shown by time table No. 34.

Time-table No. 35, in effect June 12, 1870, succeeding time-table No. 34.

Express No. 3 and express train No. 4 discontinued, and
Mail train No. 1 passed Corinth at 4.25 p. m., running to Tuscumbia for supper at 7.09.
Mail train No. 2 passed Corinth 9.20 a. m., having breakfasted at Iuka at 7.35 a. m.
All the passenger trains that passed Corinth on No. 35.

Time-table No. 36, in effect June 28, 1870, succeeding time table No. 35.

Mail train No. 1 passed Corinth at 4.25 p. m., running to Tuscumbia for supper at 7.09 p. m.
Mail train No. 2 passed Corinth at 9.20 a. m., having breakfasted at Iuka at 7.35.
This is all the passenger trains then passing Corinth.

Time-table No. 37, in effect Sept. 10, 1870, succeeding time-table No. 36.

Express train No. 3 passed Corinth 12.57, night.
Mail train No. 1 passed Corinth 4.25 p. m., neither train stopping for a meal.
Mail train No. 2 passed Corinth at 8.55 a. m., & took breakfast.
Express train No. 4 passed Corinth 12.30, night; stopping 30 minutes.
This is all the passenger trains passing Corinth at that time, as shown in time-table No. 37.

Time-table No. 38, in effect Nov. 1, 1870, succeeding time-table No. 37.

285 Express train No. 3 passed Corinth 12.57, night.
Mail train No. 1 passed Corinth 4.25 p. m. without stopping for meals.
Mail train No. 2 passed Corinth 8.55 a. m., and took breakfast there.
Express train No. 4 passed Corinth 11.32 night.
This is all the passenger trains passing Corinth as shown in time-table No. 38.

Time-table No. 39, in effect Nov. 21st, 1870, succeeding time-table No. 38.

Express train No. 3 passed Corinth 12.45, night.
Mail train No. 1 passed Corinth 4.47 p. m., & took supper there.
Mail train No. 2 passed Corinth 6.46 a. m., & took breakfast at Gr. Junction at about 9.00 a. m.
Express train No. 4 passed Corinth at 12.30, night.
This is all the passenger trains passing Corinth as shown in time-table No. 39.

Time table No. 40, in effect Jan'y 4th, 1871, succeeding time table No. 39.

Express train No. 3 passed Corinth 12.45, night.
Mail train No. 1 took supper at Corinth at 4.42 p. m.
Mail train No. 2 took breakfast at Corinth at 7.12 a. m.
Express train No. 4 passed Corinth at 12.30, night.
This is all the passenger trains passing Corinth as shown in time-table No. 40.

Time-table No. 41, in effect May 29th, 1871, succeeding time table No. 40.

Mail train No. 1 passed Corinth at 3.37 p. m., having dined at Gr. Junction at 1.20 p. m.
Express train No. 3 passed Corinth 2.13, night.
Mail train No. 2 passed Corinth 7.29 a. m., having taken breakfast at Burnsville at 6.29 a. m.
Express train No. 4 passed Corinth 12.36, night.
This is all the passenger trains passing Corinth as shown by time-table No. 41.

Time-table No. 42, in effect June 5th, 1871, succeeding time-table No. 41.

Express train No. 3 passed Corinth at 2.13, night.
Mail train No. 1 passed Corinth at 3.37 p. m., having dined at Gr. Junction at 1.20 p. m.
Mail train No. 2 passed Corinth at 7.29 a. m., having breakfasted at Burnsville at 6.29 a. m.
Express train No. 4 passed Corinth at 12.30, night.

286 This is all the passenger trains passing Corinth, as shown by time table No. 42.

Time table No. 43, in effect July 3d, 1871, succeeding time table No. 42.

Express train No. 3 passed Corinth 6.20 a. m., & took breakfast there.
Mail train No. 1 passed Corinth 3.37 p. m., having dined at Gr. Junction 1.20 p. m.
Mail train No. 2 passed Corinth 7.21 a. m. & took breakfast there.
Express train No. 4 passed Corinth at 5.32 p. m., taking supper at Gr. Junction at 7.26 p. m.
This is all the passenger trains passing Corinth, as shown by time table No. 43.

Time table No. 43, revised, in effect July 9th, 1871, making no changes affecting stoppage at Corinth for meals.

Time table No. 44, in effect Oct. 11th, 1871, succeeding time table No. 43, revised.

Express train No. 3 passed Corinth at 6.20 a. m. & took breakfast there.
Mail train No. 1, dinner at Gr. Junction, and passing Corinth 3.37 p. m.
Mail train No. 2 passed Corinth 7.21 & took breakfast there.
Express train No. 4 passed Corinth at 5.30 p. m., taking supper at Gr. Junction 7.26 p. m.
This is all the passenger trains passing Corinth, as shown by time table No. 44.

Time table No. 45, in effect Nov. 13th, 1871, succeeding time table No. 44.

Express train No. 3 passed Corinth 6.20 a m. & took breakfast there.
Mail train No. 1 passed Corinth 4.33 p. m., having dined at Grand Junction.
Mail train No. 2 passed Corinth at 7.21 a. m. & took breakfast there.
Express train No. 4 passed Corinth at 5.35 p. m. & took supper at Junction at 7.31 p. m.
This is all the passenger trains passing Corinth, as shown by time table No. 45.

Time table No. 46, in effect Dec. 24th, 1871, succeeding time table No. 45.

Express train No. 3 passed Corinth 6.20 a. m. and run to Tuscumbia at 8.34 a. m. for breakfast.
Mail train No. 1 passed Corinth at 4.33 p. m., having dined at Gr. Junction.
Mail train No. 2 passed Corinth at 7.21 a. m., running to Gr. Junction for breakfast at 9.19 a. m.
Express train No. 4 passed Corinth at 5.35 p. m., running to Grand Junction for supper at 7.31 p. m.

This is all the passenger trains passing Corinth, as shown by time table No. 46.

Time table No. 47, in effect Feb'y 11th, 1872, succeeding time table No. 46.

Express train No. 3 passed Corinth at 2.13 m. (night).

287 Mail train No. 1 passed Corinth at 4.33 p. m., having dined at Junction.

Mail train No. 2 passed Corinth at 7.21 a. m., running to Gr. Junction for breakfast at 9.19 a. m.

Express train No. 4 passed Corinth at 12.30, night.

This is all the passenger trains passing Corinth, as shown in time table No. 47.

Time table No. 48, in effect Feb'y 18th, 1872, succeeding time table No. 47.

Express train No. 3 passed Corinth 2.13, night.

Mail train No. 1 passed Corinth 4.27 p. m., having dined at Junction at 2.05 p. m.

Mail train No. 2 passed Corinth 7.21 a. m., running to Gr. Junction for breakfast at 9.19 a. m.

Express train No. 4 passed Corinth 12.30, night.

This is all the passenger trains passing Corinth, as shown on time table No. 48.

Time table No. 49, in effect July 1st, 1872, succeeding time table No. 48.

Express train No. 3 passed Corinth at 2.13, night.

Mail train No. 1 passed Corinth 5.31 p. m., having dined at Junction at 3.20 p. m.

Mail train No. 2 passed Corinth at 5.53 p. m., running to Gr. Junction for supper at 8.05 p. m.

Express train No. 4 passed Corinth at 12.17, night.

This is all the passenger trains passing Corinth, as shown by time table No. 49.

Other trains than passenger trains & not carrying passengers did have meals furnished for employees of such trains by Scruggs House; but it would be out of my power & beyond my recollection to enter into a detail of such patronage. The period to which I have brought my answers, viz, July 1st, 1872, determined my control and management of trains, as that date is the one when the Security Co. took the road, & I passed to the auditor's office, and hence know no more than stated to that time. Was connected with the road as asst. superintendent as far back as 1869, and state from knowledge of my own, and have refreshed my memory by reference to files of time tables which I then made and preserved.

288 Answer to int'y No. 4. Know nothing of the Scruggs House in 1876, or at the other date.

Answer to int'y No. 5. Scruggs House, at Corinth, was first class at one time; it however fell off in its management latterly; dates not remembered, but believed to be since winter of '71-'2.

Answer to int'y No. 6. Don't know.

Answer to last int'y (not numbered). I made out all the time tables enumerated here, and in doing so always gave the Scruggs House a

chance for a meal, if the hour (and the hour considered in connection with the time of year, or to put it differently, long days or short days) suited. Was personally somewhat intimate with & very friendly to Scruggs' nephew, who seemed to manage the house, and did everything in my power to help his house. I was not generally controlled by superior authority in this matter, and know nothing of any differences then existing, if they did exist, between Scruggs and the management of the railroad company.

Answer to cross-int'y No. 1. Chapman made application to me for a train or trains to stop for meals. I felt very kindly toward him, and have the impression I helped him out, but not knowing the date he held the lease, cannot say positively that I did, or to what extent. Don't remember much about Gillenwater's or Young's management, or the time of it; am not clear on this point.

Answer to cross-int'y No. 2. My custom was to pass over my division as frequently as possible, consistent with my official duties, sometimes once, twice, or oftener each month. Generally took a meal at the Scruggs House; never complained of my fare, but heard complaints lat'erly, from travellers and conductors. The house treated me well.

289 Answer to cross int'y No. 3. I know nothing of the kind. President Wicks repeated complaints to me, which he alleged reached him from travellers, but he gave me no orders to pass the house by. I repeated that I felt well disposed to Scruggs, & acted accordingly uninstructed.

Answer to cross-int'y No. 4. Chapman was not indebted to the company. He fell behind with the company's treasurer as his paymaster; but the company had no claim on Chapman, and that had no bearing on his being patronized by the co.'s trains. He further settled with the treasurer before he went to Corinth.

Answer to cross int. No. 5. I don't know anything about the condition of the property now as to the control being exercised over it. Haven't thought of the subject in several years. And further this deponent saith not.

C. L. ANDERSON.

Subscribed and sworn to before me this 25th day of May, A. D. 1876.

[SEAL.] HUNSDON CARY,
U. S. Commissioner, Dist. of West Tenn.

Deposition of W. J. Ross.

Answers of W. J. Ross to the annexed interrogatories and cross interrogatories.

Answer to interrogatory No. 1. I reside in the city of Memphis, Shelby County, Tenn. From July 3d, 1872, to Jan'y 1st, 1873, I occupied the position of superintendent western division Memphis & Charleston Railroad, the road during this period being operated by the Southern Railway Security Company. From January 1st, 1873, to May 1st, 1874, I occupied the position of general superintendent, at which time the lease to the Southern Railway Security Company

290 was cancelled, since which time I have occupied the position of general superintendent and superintendent of transportation and road department.

Answer to int'y No. 2. As general superintendent and superintendent of transportation, my duties included the preparation and adoption of all time tables for the government of all regular trains run on the road.

Answer to interrogatory No. 3. The passenger trains did stop for meals at the Scrugg's House, Corinth, Mississippi, when the time suited for meals, and at times regarded as unsuited to take meals, to wit:

Time table No. 1, in effect July 28th, 1872.

Express train No. 3 passed Corinth at 10.07 a. m., passengers having breakfasted at Grand Junction at 7.30 a. m.

Mail train No. 1 passed Corinth at 5.31 p. m., having dined at Grand Junction at 3.20 p. m.

Mail train No. 2 passed Corinth at 5.50 a. m.; breakfasted at Grand Junction at 7.50 a. m.

Express train No. 4 passed Corinth at 5.35 p. m., and took supper at Grand Junction at 7.46 p. m.

Time table No. 2, in effect August 4th, 1872, succeeding time table No. 1.

Express train No. 3 passed Corinth at 10.07 a. m., passengers having taken breakfast at Grand Junction at 7.30 a. m.

Mail train No. 1 passed Corinth at 5.31 p. m., passengers taking dinner at Grand Junction at 3.20 p. m.

Mail train No. 2 passed Corinth at 5.50 a. m., & took breakfast at Grand Junction at 7.50 a. m.

Express train No. 4 passed Corinth at 4.14 p. m., & took dinner.

Time table No. 3, in effect October 29th, 1872, and succeeding time table No. 2.

Express train No. 3 passed Corinth at 10.07 a. m., passengers having taken breakfast at Grand Junction at 7.30 a. m.

291 Mail train No. 1 passed Corinth at 4.56 p. m., having dined at Grand Junction at 2.20 p. m.

Mail train No. 2 passed Corinth at 5.50 a. m. and took breakfast at Grand Junction at 7.50 a. m.

Express train No. 4 passed Corinth at 6.35 p. m. and took supper.

From time-table No. 4, in effect Feb'y 9, 1873, to time-table No. 1, in effect May 31, 1874, and from time-table No. 1 to time-table No. 9, in effect Feb'y 21st, 1875.

Passenger trains did not stop at Corinth for meals, the hours of passing not suiting.

Time-table No. 10, in effect April 25th, 1875.

Express train No. 3 passed Corinth at 12.52 a. m.

Mail train No. 1 passed Corinth at 5.10 p. m., passengers supping at Tuscumbia at 7.45 p. m.

Mail train No. 2 passed Corinth at 5.48 a. m., passengers taking breakfast at Grand Junction at 8.00 a. m.

Express train No. 4 passed Corinth at 6.20 p. m., passengers taking supper.

Time-table No. 11, in effect May 23d, 1875.

Express train No. 3 passed Corinth at 12.33 a. m.

Mail train No. 1 passed Corinth at 3.27 p. m., passengers having dined at Grand Junction at 1.15 p. m.

Mail train No. 2 passed Corinth at 5.55 a. m., passengers taking breakfast at Grand Junction at 8.05 a. m.

Express train No. 4 passed Corinth at 6.20 p. m., passengers taking supper.

Time-table No. 12, in effect May 31st, 1875.

Express train No. 3 passed Corinth at 8.29 a. m., passengers having taken breakfast at Grand Junction at 6.26 a. m.

Mail train No. 1 passed Corinth at 3.28 p. m., passengers having taken dinner at Grand Junction at 1.20 p. m.

Mail train No. 2 passed Corinth at 5.55 a. m., passengers taking breakfast at Grand Junction at 8.10 a. m.

Express train No. 4 passed Corinth at 6.15 p. m., passengers taking supper.

Time-table No. 13, in effect June 13th, 1875, to time-table No. 26, in effect April 16th, 1876.

Passenger trains did not stop at Corinth for meals; the unsuitable hours at which trains passed and the complaints by the travelling
292 public relative to the fare rendered it necessary to stop trains at other points where there was more satisfaction given.

The answer of C. L. Anderson to interrogatory No. 3, as to running of trains, &c., between dates of January 1st, 1869, and April 1st, 1871, is verified by my own personal knowledge, from January 1st, 1869, to August 15th, 1870, and I adopt his statement in reference thereto as a part of my deposition.

Answer to interrogatory No. 4. The Scruggs House at Corinth, Miss., at the time of the surrender to the Memphis and Charleston Railroad Company, May 1st, 1876, was in a dilapidated condition. The roof was leaking, the hall floors and the main sitting-room floors required relaying. The floor and railing of the verandah required replacing. Several sash' in south end of building were gone; a number of glass in windows required replacing. The entire building, inside and out, required repainting, and all the rooms required repapering and calsomining. Much of the plastering in the halls and rooms required replacing. The chimney to kitchen required rebuilding and new floors to be layed, the walls and ceilings cleansed & whitewashed, the cistern repaired; the tops of two chimneys to main building required repairs, a portion of the guttering & pipes required removal and replacing, and in fact the repairs necessary to put the building in proper repair is estimated to cost about $1,200.00 to 1,500 dollars.

Answer to interrogatory No. 5. Since July 3d, 1872, the Scruggs House has not been kept in such style as to be termed a first class house; in fact, a portion, if not all the time, trains have been stopped there, from July 3d, 1872, to the time trains ceased to stop for meals, complaints were made by passengers about the poor fare. From August 15th, 1870, to July 3d, 1872, I was not on the road, and can-
293 not answer as to the character of the house during that period.

Answer to cross-interrogatory No. 1. I was not on the road at the

time Gillenwaters & Chapman kept the Scruggs House, and know nothing of their attempts to have trains stop for meals. Since Capt. Young has occupied the house, no effort that I am aware of has been made by him to have the trains on the Memphis & Charleston Railroad stop for meals. On the contrary, heard him say he declined to feed the trains on the Mobile & Ohio road, as they did not pay.

Answer to cross-interrogatory No. 2. Do not remember to have stopped at the Scruggs House when kept by Chapman. Have stopped at the Scruggs House while kept by Gillenwaters & Capt. Young; was treated kindly. Do not consider that either of them kept a first-class house.

Answer to cross-interrogatory No. 3. I was not on the road or in any way connected with it 21st April, 1871, at the time the award was made by arbitrators, and know nothing about the action of the officers of the road.

Answer to cross-interrogatory No. 4. I know nothing personally about Chapman's indebtedness to the Memphis & Charleston Railroad Co.

Answer to cross-interrogatory No. 5. At date of this answer, and since the 1st of May, 1876, the said hotel has been in possession of the Memphis & Charleston Railroad Company.

W. J. ROSS.

Sworn and subscribed to before me this 25th day of May, 1876.
[SEAL.] HUNSDON CARY,
U. S. Commissioner, Dist. of West Tenn.

Com'r's fees, $5.00. Paid by plaintiff.

Filed May 29th, 1876.

G. R. HILL, *Clerk.*

294 And there was also another deposition filed in said cause on the 31st day of May, 1876, which is in the words & figures following, to wit:

Interrogatories for C. W. McCord.

In U. S. circuit court at Oxford, Miss.

MEMPHIS & CHARLESTON RAILROAD CO.
vs.
NARCISSA SCRUGGS ET AL.

Interrogatories & cross-interrogatories to be propounded to C. W. McCord, witness for complainant, taken upon reference, whose deposition it is agreed may be taken before any clerk or judge of a court of record, notary public, or U. S. commissioner, formal caption, notice & all formalities being waived & only exceptions for competency & relevancy reserved.

HUMES & POSTON, *For Comp't.*
WM. F. DOWD, *For Def't.*

Interrogatory 1st, by Humes and Poston. Where do you at present reside, and where have you resided, & at what have you been engaged for the past 5 years?

Interrogatory 2d, by same. State whether or not at any time since 1871 you have had any connection with the furniture in the Scruggs House at Corinth, Miss. If yea, what such connection was, when begun & ended.

Interrogatory 3d, by same. If in answer to the foregoing you should say you had charge of such furniture, then state by what authority you took charge of it, as whose property, how long you had it in charge, and the final disposition you made of it.

Interrogatory 4th, by same. If you say you sold it, then state the time such sale was made, to whom same was made, & the final disposition of the furniture by you, & also the purchaser, if you know.

Interrogatory 5th, by same. Please state, if you know, what publicity, if any, was given to the sale. Was or not advertisements thereof made, & was or not the sale at private or public outcry to the highest bidder.

295 Interrogatory 6th, by same. State, if you know, what was the gross amount of sale.

Interrogatory 7th, by same. State, if you know, for whose account the sale, & to whom the furniture belonged, at date sale was made by you, if such you say is the case.

HUMES & POSTON,
Sol'rs for Compl't.

Cross-int. 1st, by defendant. Was not the sale made under a decree of the United States district court, at Oxford, Miss., and were you *knot* the assignee in the matter of Chapman, bankrupt, and was not the furniture, &c., purchased by Matthews, as agent for Mrs. Scruggs, and is not the whole matter on records of said court in the case of Mrs. N. Scruggs vs. the assignee of Chapman?

DOWD, *Sol'r for Deft.*

STATE OF MISSISSIPPI,
Alcorn County:

By virtue of the within agreement I, Robt. Henderson, chancery clerk in and for said county and State, this the 29th day of May, 1876, in my office, in the city of Corinth, Mississippi, caused to come before me C. W. McCord, the witness therein named, who, upon being by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, in answer to the interrogatories propounded, answers as follows:

Deposition of C. W. McCord.

Answer to interrogatory 1st. I reside on my homestead adjoining the corporation of the city of Corinth, on the north, and am employed in attending to my domestic interests. I have resided at the same place for the last five years, and have within that time, in addition to that duty, filled the office of county superintendent of public educa-

296 tion for the county of Alcorn & city of Corinth.

Ans. to int. 2d. Yes; I was made assignee by special order of the U. S. court at Oxford on the 14th day of January, 1875, at the suit of Narcissa Scruggs vs. G. R. Hill, ass'n' of Lewis Chapman, or I was substituted by said decree in the place of G. R. Hill, and directed to take charge of & sell the furniture of the Scruggs House, and pay over the net proceeds to said G. R. Hill, as clerk of said court, subject to its farther orders. On the 23d Jan'y, 1875, I advertised said property for sale, & did sell on the 22 & 23 of February, and on the 11th day of May I made return of the net proceeds to said G. R. Hill, clerk, as directed.

Answer to int. 3. By the authority of said order of court, in lieu of the said G. R. Hill, in whom by decree of said court had been vested all the title of said property, after having been divested out of all parties

litigant; had charge, as in last answer, from 23 Jan'y till 23d February, 1875, and closed by making & returning final account and $691.50 cash as net proceeds to said G. R. Hill, clerk U. S. court at Oxford, Miss., on the 11th May, 1875.

Answer to interrogatory 4th. I sold on the 22d & 23d of Feb'y, 1875, closing up accounts on the 24th. I sold to I. N. Whitesides, E. R. Matthews, T. P. Young, jr., S. Mahoney, D. L. James, E. Gray, & Wm. Goin. In closing out I think the largest part of the furniture was paid for and retained by T. P. Young, jr., for his father, the occupant of the Scruggs House, or Corinth Hotel, as it was called. I was compelled afterwards to resell some part of the property, not having been paid for at the sale.

Answer to int. 5th. I had printed hand-bills posted and sent to several neighboring towns; the first, dated 23d January, to sell on
297 10th Feb'y. The sale was postponed, and printed hand-bills reissued for sale on 22d Feb'y. The sale was at public outcry to the highest bidder. One article afterwards resold I let go at an agreed price.

Answer to int. 6th:

The gross amount was	$768 10
Deducting expenses	76 60
Net amount remitted	$691 50

Answer to int. 7th. I know only by & through the copy of the order of court as furnished me.

Answer to cross-int. 1st by defendant. The sale was so made, and my understanding from the decree was that I was made Chapman's assignee for this speciality. I know nothing of Matthews' agency for Mrs. Scruggs. I suppose the whole matter is on record in said court.

C. W. McCORD.

Sworn to and subscribed before me May 29th, 1876.

[SEAL.] ROB'T HENDERSON, *Clerk.*

Filed May 31st, 1876.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 5th day of Feb'y, 1877, still another deposition was filed in said cause, which is in the words and figures following, to wit:

Deposition of Whitfield & Young.

CORINTH, MISS., *Jan.* 27, '77.

Messrs. HUMES & POSTON:

GENTLEMEN: Your telegram asking us to forward statement of taxes due on hotel property came duly to hand. We sent you statement some 3 weeks since by mail. The fact is there has been no tax
298 paid on this property by any one since 1871, except for the years 1875-'6, and this the M. & C. R. R. Co. paid, and Mr. Cruse has the receipt therefor. You must received statement, and misplaced & forgotten it.

Yours, truly,

WHITFIELD & YOUNG.

Statement shows the amount of tax due on the property each year and that none has been paid save for the years 1875–'6, and that by M. & C. R. R. Co. We are satisfied that we sent you the statement, because we paid a young man to get it up for us, and wrote you to procure our Mr. Young a pass over the road at the same time.

Yours, &c.,

W. & Y.

Agreement of counsel.

In U. S. circuit court for the northern district of Mississippi, at Oxford.

MEMPHIS & CHARLESTON R. R. Co.
vs.
NARCISSA SCRUGGS.

In this cause, it being shown by the letter hereto attached that no taxes, State, city, or county, has been paid upon the property known as the Scruggs House, at Corinth, Miss., & in dispute in this cause, it is agreed that no such taxes were paid by def't, & that the letter hereto attached may be considered as the depositions of Messrs. Young & Whitfield on that point.

HUMES & POSTON,
Sol'rs, &c., for M. & C. R. R. Co.

I agree that the letter of Young & Whitfield may be read as their deposition.

W. F. DOWD,
Sol'r for Def't.

Filed Feb'y 5th, 1877.

G. R. HILL, *Clerk.*

299 And afterwards, to wit, on the 4th day of June, 1877, a bill of cost was filed in said cause, which is in the words and figures following, to wit:

Bill of cost.

NARCISSA SCRUGGS
vs.
J. H. VISER ET AL.

Bill of cost, chancery court, Alcorn County.

Clerk Fleming's fees:

Fil., 1.50; doc., 15; 2 inj., 1.50; garnishment, 75		3 90
Att., 75; 3 bonds, 1.50; appearance, 30		2 55
4 ret., 40; 11 affi'ts, 2.75; mot. & order, 2.10		5 25
Com. to take dep., 100; copy int., 75; cert., 50; pos't, 9		2 34
Ord. pub, 100; certified copy, 75		1 75
3 exh., 5.50; set conn., 10; pro. con., 50		6 10
Ent. final decree, 1.50; enroll., 1.00; tax cost & cost, 50		3 00
Final record, 31.00; rep't on reference, 2.00		33 00
Fi. fa. & cost, 1.00; ent. & ret. & cert., 50		1 50
Transcript		54 50
By cash for transcript	$54 50	
Rec'd of mandate, 1.00; bond, 50; affi'ts, 50		2 00
Report of master, 2.00		2 00
	$54 50	117 89

Balance due R. J. Fleming		63 39
Corinth Courier fees:		
Pub. non-resident notice		18 00
Proof pub		1 00
300 Coroner White's fees:		
Serving injunction, 4 bills		2 50
Serving attachment, 4 "		2 50
Sheriff Gillenwaters' fees:		
Fees on injunction, 4 bill'		2 50
" " "		4 50
Com'r Black:		
Taking deposition		5 00
Com'r Wilson:		
Taking deposition		10 00
By cash by Scruggs	$10 00	
Clerk Henderson's fees:		
Mot. & orders, 30; 3 set conn., 10		40
Ent. decree, 1.50; fi. fa. & cost, 1.00		2 50
Return & cert., 50; enrolling, 1.00		1 50
Recor. bond, 50; 2 affi'ts, 50		1 00
Cert. copy decree for receiver		2 00
Tax cost & cert., 50		50
Cert. copy's decrees		3 50
	$10 00	$120 79
Balance due May, 1877		110 79
Postage		12
		$110 91

THE STATE OF MISSISSIPPI,
Alcorn County:

I, Robt. Henderson, chancery clerk of said county & State, certify that the foregoing is a true and correct copy of the bill of cost in the case of Narcissa Scruggs vs. J. H. Viser et al., as the same ap-
301 pears upon execution docket now on file in my office.

Given under my hand and seal of office at Corinth, May 22d, 1877.

[SEAL.] ROBT HENDERSON, *Clerk.*

Filed June 4th, 1877.

G. R. HILL, *Clerk.*

And also on the same day a certified copy of a decree was filed in said cause, which is in the words and figures following, to wit:

Decree.

Chancery court, Alcorn County, August term, 1873.

N. SCRUGGS
vs.
J. H. VISER ET AL.

Be it remembered that this cause again came on to be heard and was heard on the original bill (as amended to correspond with certain facts which appeared in the cross-bill, and the answer of the complainant thereunto and the proof), the answer and cross-bill of defendants, the answer of said cross-bill by complainant, and the exhibits & proofs in the cause. And appearing to the satisfaction of the court, that on the 11th day of May, 1869, that complainant, being then a married woman, executed a promissory note to defendant for the sum of five thousand, purporting to be for money loaned to Mrs. Narcissa Scruggs, for the purpose of purchasing family supplies, and necessaries & wearing for herself and children, payable twelve months after date; also one other note for the sum of one thousand dollars, purporting to be for the same consideration, but in reality given for usurious interest at the rate of 20 per cent. per annum, on the said sum of five thousand dollars, which note was paid; and on the 11th day of May, 1870, another note
302 for usurious interest for one thousand dollars was given for an extension of said note for five thousand dollars, for twelve months, purporting to be for money loaned to said Narcissa Scruggs, for the purpose of purchasing family supplies, and necessaries, and wearing apparel for herself and children, which said note was also signed by said J. W. Scruggs, the husband of said Narcissa Scruggs, and dated at Hutsville, Alabama.

It further appea'ing that said Narcissa Scruggs, wife of said J. W. Scruggs, on the 11th day of May, 1869, signed with her husband a deed of trust, by which she conveyed to A. E. Reynolds and James E. Stewart her leasehold interest in the hotel and land, furniture and appurtenances as described in the pleadings, to secure said two first notes given, which deed was never acknowledged by said Narcissa Scruggs, as the law requires, and is whol'y void.

It further appearing that on said 11th day of May, 1869, said Narcissa Scruggs, signed with her husband another deed of trust, by which she conveyed the same property to the same parties, as trustees, to secure the payment of said two notes first given, which was unlawfully and improperly *and* admitted to record on the day of May, 1869, and that said record and acknowledgments are void.

It furthe' appearing that on the 15th day of April, 1871, said deed was interlined with the words, "which was recorded on the 11th day of May, 1870, and again acknowledged by said Narcissa Scruggs, before R. J. Fleming, styling himself the clerk of Tishomingo Co., but affixing the seal of the chancery court of Alcorn County, of which the court judicially knows he was then and there clerk, and that said deed was lawfully acknowledged by said Narcissa Scruggs and said John
303 W. Scruggs, and admitted to record in the chancery clerk's office of Alcorn County on the 15th of April, 1871.

It further appearing that on the 22d day of April, 1871, said Narcissa Scruggs, being a married woman, jointly with her husband gave to said Viser the drafts for the sum of six thousand and sixty-eight $\frac{20}{100}$ dollars, drawn by them on Scruggs & Co., and accepted by them, payable the

15th August, 1871, at the First National Bank of Memphis, Tenn., on the conditions and for the purposes stated by defendant in his cross-bill.

It further appearing that said John W. Scruggs departed this life in the month of August, 1871, and that after his death said Narcissa Scruggs made a verbal promise to pay said notes and interest, and after hearing on the pleadings, exhibits and proofs in the cause, and the argument of counsel, the court is satisfied that said deed of trust and promis'ory notes and said drafts executed by said Narcissa Scruggs, while she was a married woman, are void, because she was not authorized by the statute of Mississippi, under which she held said leasehold property, to make said contracts and agreements, and that said Viser is not entitled to the rents & profits of said property, and for good and sufficient reason, appearing to court, and that a verbal promise to pay said notes, after she became sole, did not give validity to said several deeds and contracts or either of them.

It is therefore hereby ordered, adjudged, and decreed that said deeds of trust, and said several promissory notes and said drafts or bill of exchange in the pleadings mentioned and described are hereby
304 declared cancelled, null an' void, and held for naught as to the said Narcissa Scruggs; that the said defe'nt, J. H. Viser, shall deliver up said deeds of trust to the clerk of this court, who shall cancel the same, within thirty days from the date of this decree, and shall make said several promissory notes and draft or bill of exchange cancelled as to said Narcissa Scruggs, and on his failure so to do the clerk of this court shall enter such cancellation on the record of said deeds of trust, in the chancery clerk's office of Alcorn County; and whereas said defendants, Jas. E. Stewart, A. E. Reynolds, trustees in said deeds of trust, and said defendant Viser have caused said property to be advertised for sale under said deeds, and W. P. Curlee, by order of the circuit judge in vacation without notice, was appointed receiver to take possession of said property. It is further ordered that defendant J. H. Viser and said trustees & receiver W. P. Curlee, and all and each of them, agents, attorneys, and assigns be and they are hereby perpetually enjoined from enforcing or attempting to enforce or collect said deeds of trust and promissory notes, drafts, or bill of exchange and contracts in the pleadings mentioned, as against said Narcissa Scruggs, her heirs, executors, administrators, & assigns, in any matter whatever. It is further ordered that the said order appointing said W. P. Curlee receiver be set aside, and that the said J. H. Viser, defendant in the original bill and complainant in the cross bill pay the costs of this suit, for which execution may issue as at law.

Ordered, adjudged, and decreed this 25th day of August, 1873.

A. E. REYNOLDS, [SEAL.]
Chancellor.

305 *Decree.*

Chancery court, March term, 1876.

NARCISSA SCRUGGS
v.
J. H. VISER.

Be it remembered that on thi the 16th day of March, 1876, the same being a day of the regular March term, 1876, of the chancery court of Alcorn County, Mississippi, came on to be heard, and was heard, this

cause on bill & exhibits answer & cross bill of J. H. Viser, and the answer thereto and the proofs in the cause; and it appearing to the satisfaction of the court that the complainant, Narcissa Scruggs, and her husband, J. W. Scruggs, did, on the 15th day of April, 1871, execute to complainant Viser a deed in trust on the property known as the Scruggs House, a hotel situated in the city of Corinth, in Alcorn County, Mississippi, but then in the county of Tishomingo, in said State, in the south-east angle of the crossing of the Memphis and Charleston Railroad and the Mobile & Ohio Railroad, in the said city of Corinth, together with all the rights and appertenances, household and kitchen furniture thereto belonging, to secure the payment of a certain sum of money therein mentioned, evidenced by the joint note of the said Narcissa Scruggs and J. W. Scruggs. And it further appearing to the satisfaction of the court that the above-described property was the separate property of the said Narcissa Scruggs, who was a married woman at the time of the execution of the said deed in trust, and that the money intended to be secured by the said deed in trust was borrowed by her husband, J. W. Scruggs, and that the said complainant, Narcissa Scruggs, his wife, could only bind and encumber her separate property as afore-
306 said to the extent of the income thereof and it further appearing to the satisfaction of the court from the report of Commissioner R. J. Fleming, who was appointed at a former term of this court, to take & state an account between the parties hereto, that there was due on the 1st day of Dec'r, 1875, the time of making said report, *due* to the said J. H. Viser, on account of the indebtedness secured by the aforesaid deed in trust, the sum of four thousand three hundred and fourteen and $\frac{23}{100}$ dollars; and it further appearing to the satisfaction of the court from the report of said commissioner that the said J. H. Viser had paid, at different times, the aggregate amount of four hundred and ten an' $\frac{54}{100}$ dollars for insurance on said hotel property, being the same conveyed in said deed in trust, said payments having all been made subsequently to the execution of said deed in trust, and which said payments are, by the said commissioner, referred to the court for its action on the same; and it now appearing to the satisfaction of the court that said payments of insurance were reasonable and proper and for the safety and security of said property pending this suit; it is, therefore, considered and so ordered, adjudged, and decreed by the court, that said report of said commissioner ascertaining and reporting the said sum of four thousand three hundred & fourteen & $\frac{23}{100}$ dollars, due as aforesaid, on the 1st day of December, 1875, to the said J. H. Viser, together with said sum of four hundred and ten $\frac{54}{100}$ dollars, the amount of insurance paid by said Viser on said property, be and the same is hereby approved, confirmed, and allowed.

307 It is further ordered, adjudged, and decreed by the court, that the several credits claimed by the said Narcissa Scruggs, and not allowed by the commissioner, but by him referred to this court for examination, be and the same are hereby disallowed.

It is further ordered, adjudged, and decreed by the court, that A. J. Morgan be and he is hereby appointed a receiver, and as such, ordered and directed to take charge of the aforesaid property, fully mentioned and particularly described in said deed in trust, and to manage and rent out the same either publicly or privately, as to him may seem best for the interest of all the parties hereto, and to apply the rents, profits, and income arising from the same to the payment of the debt of the

said J. H. Viser, as aforesaid, and to render an annual account to this court, of his proceedings hereunder.

It is further ordered and adjudged by the court that the said receiver be required to execute bond in the sum of five thousand dollars, conditioned according to law, before entering on his duties as such.

It is further considered, and so ordered and adjudged & decreed, by the court that the said J. H. Viser do have and receive of the said complainant, Narcissa Scruggs, the costs in this cause to be taxed, &c.

Ordered, adjudged, and decreed, in open court, this March 16th, 1876.

C. CULLENS, [SEAL.]
Chancellor, &c.

THE STATE OF MISSISSIPPI,
Alcorn County:

I, Rob't Henderson, chancery clerk of said county & State, cer-
308 tify that the foregoing 11 pages contain a true and correct copy of the decrees in the cause of Narcissa Scruggs v. J. H. Viser et al., as rendered August 25th, 1873, and March 17, 1876, as the same appears upon the records now on file in my office.

Given under my hand and official seal at office, at Corinth, this the 21st day of May, A. D. 1877.

[SEAL] ROB'T HENDERSON, *Clerk.*

Filed June 4th, 1877.

G. R. HILL, *Clerk.*

And also a lease was filed in said cause, which is in the words and figures following, to wit:

Lease.

Articles of agreement made and entered into this the 16th day of April, 1872, between Narcissa Scruggs, of the city of Huntsville, and State of Alabama, of the first part, and Lewis Chapman, of the city of Memphis, Tenn., of the second part, witnesseth:

That whereas the party of the first part is entitled to the exclusive use, possession, and enjoyment of a certain lot of land in the town of Corinth, in the county of Alcorn, Miss., embracing one acre of land, more or less, bounded on the west by the Mobile and Ohio Railroad, on the north by the Memphis and Charleston Railroad, and now embraced in the enclosure of the hotel known as the Scruggs House, with all the buildings, out-houses, and appertenances thereunto belonging, on the terms, conditions, & stipulations contained in the bill and final decree and exhibits filed with the bill, in the case of Narcissa Scruggs vs. The Memphis & Charleston Railroad Company, No. 97, in the chan-
309 cery court of Alcorn County, Mississippi.

Therefore, in consideration of the premises hereinafter named, the party of the first part doth hereby rent and lease unto the party of the second part the said hotel and all the buildings and improvements connected therewith so long as her right of possession continues under and by virtue of the several contracts and final decree set forth in the record of said suit, provided that this lease shall in no case extend to a longer period than five years.

1st. And in consideration thereof, the party of the second part binds himself, his heirs, exr., &c., to pay to the party of the first part, her adm'rs & assigns, five hundred dollars per month in advance on the

16th day of each month, and give good security for the performance of this contract.

2nd. It is agreed that this contract shall operate as a prior lien and mortgage on all the personal property, assets, furniture, &c., belonging to the party of the second part for the faithful performance of all the obligations hereby imposed.

3rd. The party of the second part will hold said property as the tenant of the party of the first part, and will surrender the possession thereof to no one except the party of the first part, her heirs or assigns, unless enacted by due process of law.

4th. The party of the second part binds himself to keep said premises in as good repair as at this time.

5th. On the failure of the party of the second part to pay said rent promptly, or within ten days from the time due, this lease to be
310 forfeited, and the premises to be surrendered forthwith, to the party of the first part, or her order, and the party of the second part shall pay such damages as shall be sustained by reason of the non-performance of his contract.

In testimony whereof the parties have hereunto set their hands and affixed their seals this the 16 day of April, 1872.

N. SCRUGGS. [SEAL.]
LOUIS CHAPMAN. [SEAL.]

[50c. int. rev. stamp, L. C., April 16th, 1872.]
[50c. int. rev. stamp, L. C., April 16th, 1872.]

At the time of entering into the above agreement, and as an inducement to the party of the first part to enter into the same, we, the undersigned, in consideration of the premises, guarantee that said Lewis Chapman will faithfully perform all the obligations of said contract.

ROB'T T. DUNN.
WM. S. REYNOLDS.
J. M. STONE.

Certificate of acknowledgement.

THE STATE OF MISSISSIPPI,
Alcorn County:

This day personally appeared before me R. J. Fleming, clerk of the chancery court of said county, the within named R. T. Dunn, Wm. S. Reynolds & J. M. Stone, who acknowledged that they signed, sealed, and delivered the foregoing obligation on the day and year mentioned, as their acts and deeds.

Given under my hand and seal of office this 16th day of April, A. D. 1872.

R. J. FLEMING, *Clerk.*

311 *Certificate of record.*

THE STATE OF MISSISSIPPI,
Alcorn County:

I, R. J. Fleming, clerk of the chancery court of said county, certify that the foregoing lease was filed for record on the 17th day of April, A. D. 1872, and by me recorded in deed record No. 2, on pages 399, 400, & 401.

Given under my hand and seal of office this 17th day of April, A. D. 1872.

[SEAL.] R. J. FLEMING, *Clerk.*

And, to wit, on the 23 day of December, 1875, the charter granted to the Memphis & Charleston Railroad Company, by the legislature of the State of Tennessee, was filed, which is in the words & figures, to wit:

AN ACT to incorporate the Memphis & Charleston Railroad Company.

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SECTION 1. Be it enacted by the general assembly of the State of Tennessee, That for the purpose of establishing a communication by railroad between Memphis, Tennessee, and Charleston, South Carolina, the formation of a company is hereby authorized, which when formed, shall be a body corporate by the name and style of the "Memphis and Charleston Railroad Company," and by said corporate name shall be capable in law to buy, receive gifts, hold, sell, & convey real and personal estate, as hereafter provided, make contracts, sue & be sued, to make by-laws, and do all lawful acts properly insident to a corporation and necessary and proper to the transaction of the business for which it is incorporated; and to have and use a common seal, and the same to alter and destroy at its pleasure; and shall have perpetual successive members. Incorporation.

SEC. 2. Books for subscription of eight hundred thousand dollars, the capital stock of said company, in shares of twenty-five dollars each, shall be opened on the first Monday in March, 1846, and shall be kept open for six days, between the hours of ten o'clock in the morning and four in the evening of each of these days, at the following places and by the following commissioners, to wit: at Memphis by Robert C. Brinkley, Lewis Shanks, Robertson Tapp, E. S. Shields, John K. Chester, Elwin Heckman, W. N. Hart, Wyatt Christian, G. Ghalston, H. H. Means, P. G. Gains, Mat. Anderson, Reuben L. Kay, Charles Hofland, Seth Wheatley, Henry G. Smith, M. B. Winchester, Wardlow Hardard, George W. Smith, Dr. Dudley Dunn, James F. Leath, John Delafield; at Legrange by John J. Putts, Thomas B. Firth, John W. Bunton, E. W. Harris, C. Michie, & Thomas Polk; at Somerville by B. Douglass, Levin H. Coe, Robert J. Yancy, and Lewis P. Williamson: at Bolivar by Pitser Miller, William O. Ferguson, J. J. Williams, Horace Polk, John H. Bills, C. H. Horion, Calvin Jones, and C. P. Jones; at Purdy by W. J. Wisdom, James Reed, Alfred Moone, B. B. Adams, P. P. Breaden, W. C. Kendall; at Savannah by James Erwin, L. H. Boyles, David Robinson, E. H. Shelton, and A. M. Harden; at Palmira (Gedd's Landing) by Lewis H. Wells, A. H. Kendall, and Isham P. Gibbs. Book open. Commissioners.

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SEC. 3. The said commissioners or a majority of them, at each of the places aforesaid, shall receive subscription for stock in the said railroad company during the time the said books are directed to be kept open, and on each share so subscribed shall demand and receive the sum of fifty cents. First installment.

SEC. 4. As soon as the time for receiving subscriptions as aforesaid shall have expired said commissioners shall respectively deposit all the money so received by them in some incorporated bank redeeming its notes in specie, to the credit of the Memphis & Charleston Railroad Company and subject to the order of the president, and shall also forward a correct list of all the subscribers to said stock, with the number of shares each subscriber has taken, to a board of commissioners, to be composed of the following persons: Leroy Pope, E. W. M. King, Austin Miller, Walter B. Morris, W. S. Wisdom, Silas Beech, William Hamaur, and John Delafield, who may establish rules to govern their proceedings, choose their own president, and appoint such other officers and agents as they may think proper, and prescribe their duties, and who, or a majority of whom, shall meet at Memphis on the first Monday in May next, ascertain the whole number of shares taken in said company, and publish the same in some newspaper printed in Memphis on or before the first Monday in May next, and if the sum of four hundred thousand shares have been subscribed, on each of which there shall have been paid the sum of fifty cents, the Memphis and Charleston Railroad Company shall be regarded as formed, and thenceforth and from the day of the closing of the books of the subscription, as aforesaid, the said subscribers to the stock shall form a body politic and corporate, in deed and in law, by the name and for the purpose aforesaid, and in all things to be represented by the board of commissioners aforesaid, until the election of a board of directors as hereinafter prescribed.

Commissioners.

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Additional subscription.

SECTION 5. If on closing the books aforesaid, the sum of four hundred thousand dollars shall not have been subscribed, then, in that case, the said board of commissioners, by themselves or their agents, may receive subscription till the said sum be taken, and whenever that sum shall be subscribed the company shall be considered as formed, as having a corporate existence as aforesaid, and of which notice shall be given as herein before directed, and may proceed to survey the route for the road, and make an estimate of the cost of its construction; and the said board of commissioners may, by themselves or their agents, at such times and places as they may think proper, and upon such terms *as* time and manner of payment as they may deem expedient, receive additional subscriptions until the said sum shall have been subscribed, upon which the company may be formed, and the subscribers shall thenceforth form a body corporate as aforesaid, provided the same shall be done on or before the first day of January, 1849; and for the residue of the original sum the said corporation, when organized, may in like manner receive additional subscriptions.

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Reduction of shares.

SEC. 6. In case more than eight hundred thousand dollars shall have been subscribed on closing the books when they are first opened, the shares shall be reduced to that number by deducting the surplus shares from the highest subscribers, placing them on equality of number as far as

can be done; and after such reduction the holders of the remaining shares shall form the company and be interested therein in proportion to the number of shares which they may then respectively hold.

Return of subscriptions.

SEC. 7. If, on closing the books on the first day of January, 1849, said sum shall not have been subscribed, the money paid by each subscriber shall be returned to him by the said board of commissioners, after defraying the expenses of opening the books and of making a survey and map of the route and estimate of the cost of the road, which the said commissioners are hereby authorized to have made as soon as practicable.

Board of directors.

316 SECTION 8. The affairs of said company shall be managed by a board of directors to consist of nine, five of whom shall constitute a quorum, and who shall be chosen by the stockholders from their own body; and a president of the company shall be elected by the directors from among their own number in such manner as the regulations of the corporation shall prescribe.

Meeting of stockholders.

SEC. 9. As soon as the said sum shall have been subscribed, it shall be the duty of the commissioners appointed to declare the same to appoint a time for the stockholders to meet in Memphis, and give notice thereof by publication in some newspaper in Memphis and Somerville, at which time the said stockholders, in person or by proxy, shall proceed to elect the directors of the company, and to enact all such regulations, rules, and by-laws, as may be necessary for the government of the corporation and the transaction of its business. The persons elected directors at this meeting shall serve for such period (not exceeding one year) as the stockholders may direct, and at this meeting the stockholders shall fix on the day and place or places when the subsequent election of directors shall be held, and such election shall thenceforth be annually made; but, if the day of annual elections should pass without any election of directors, the corporation shall not be thereby dissolved; but it shall be lawful on any other day to hold and make such election in such manner as may be prescribed by a by-law of the corporation.

Vacancies.

SEC. 10. The board of directors may fill all vacancies which may occur in it during the period for which their board shall have been elected, and, in the absence
317 of the president, may fill his place by electing a president pro tempore.

Contracts.

SEC. 11. All contracts and agreements authenticated by the president of the board shall be binding on the company without seal, or such other mode of authentication may be used as the company by their by-laws may adopt.

Restrictions.

SEC. 12. The board of directors shall not exceed in their contrac s the amount of the capital of the corporation and of the funds which the corporation may have borrowed and placed at the disposal of the board, and in case they should do so the president and directors who may be present at the meeting at which such contract or contracts so exceeding the amount aforesaid shall be made shall be jointly and severally liable for the excess, both to the contractor or contractors and the corporation: Provided, That any one

may discharge himself from such liability by voting against such contract or contracts, and causing such vote to be recorded on the minutes of the board, and giving notice thereof to the next general meeting of the stockholders.

No road to run latterly with this.

SEC. 13. After the route of said railroad shall have been accurately surveyed and adopted, and a plat thereof deposited in the office of the secretary of state, it shall not be lawful for any other railroad to be built, cut, or constructed in any way or manner or by any authority whatsoever, running by latterly within twenty miles of the route so adopted, unless by said company or with the consent of the board of directors for the time being.

Exclusive rights.

SEC. 14. The said company shall have the exclusive right of transportation or conveyance of persons
318 good', merchandise, and produce on the said railroad by them to be constructed: Provided, That the charge of transportation and conveyance shall not exceed thirty-five cents per hundred pounds on heavy articles, and ten cents per cubic foot on articles of measurement, for every hundred miles, and five cents a mile for every passenger. And provided also, That the said company may, when they see fit, farm out their rights of transportation on said road, subject to the rates above mentioned.

Installments.

SEC. 15. The board of directors may call for the payment of twenty-four and a half dollars on each share of stock, in sums not exceeding two dollars, in every thirty days: Provided, That twenty days' notice to be given of such, in at least one newspaper of the State in which any of the stockholders may reside; and a failure to pay, or secure to be paid, according to the rules of the company, any of the installments so called as aforesaid, shall induce a forfeiture of the share or shares on which default shall be so made, and all payment thereon, and the same shall invest in and belong to the company, and may be restored to the owner or owners by the board of directors, if they deem proper, on the payment of all arrears on such shares and legal interest thereon; or the directors may waive the forfeiture after thirty days' default, and sue the stockholders for the installment due, at their discretion.

Transfer.

SEC. 16. The stock of said company may be transferred in such manner and form as may be directed by the by-laws of said corporation.

Increase of capital.

SEC. 17. The said company may at any time increase its capital to a sum sufficient to complete *to* said road,
319 and stock it with everything necessary to give it full operation and effect, either by opening books for new stock, or by selling such new stock, or by borrowing money on the credit of the company, and on the mortgage of its charter and works; and the manner in which the same shall be done in either case shall be prescribed by the stockholder' at a general meeting, and any State, or any citizen, corporation, or company of this or any other State or county may subscribe for and hold stock in said company, with all the rights, and subject to all the liabilities of any other stockholder.

Report of directors.

SEC. 18. The board of directors shall, once in every year at least, make a full report on the state of the company and its affairs to a general meeting of the stockholders, and oftener if directed by a law; and shall have power to call a general meeting of the stockholders when the board may deem it expedient.

Eligibility.

SEC. 19. No person but a citizen of the United States, and being a bona fide stockholder in his own right, which he shall have held at least three months previous to his election (except the first), who shall not have held in his own right the share or shares on which he offers to vote, at least three months previous to such election.

Proxy.

SEC. 20. Stockholders may vote in person or by proxy; and in the election of directors, and in voting on all questions which come before a meeting of the stockholders, or which may be submitted to the decision of the stockholders in any other manner, the owner of one or more shares shall be entitled to one vote for each and every share he, she, or they may own, as aforesaid.

Property of the company.

SEC. 21. The said company may purchase, have
320 and hold in fee, or for a term of years, any lands, tenements, or hereditaments, which may be necessary for said road, or appurtenance thereof, or for the erection of depositories, storehouses, houses for the officers, servants, or agents of the company; or for workshops, or foundaries, to be used for said company; or for procuring timber, stones, or other materials necessary for the construction of the road or its appurtenances; or for effecting transportation thereon.

Obstruction of roads, etc.

SEC. 22. The said company shall have the right when necessary to construct the said or any branch thereof across or along any public road or water course, provided that the said road and the navigation of such water course shall not thereby be obstructed; and provided further, that such railroad shall not be located so near any turnpike road as to injure or prejudice the interest of the stockholders in such turnpike road, except upon such terms as may be agreed upon by the president and directors of the same, on behalf of the stockholders.

Purchase bridge of road.

SEC. 23. The said company may purchase, have, and hold any bridge or turnpike road over which it may be necessary to carry the said railroad, and when such purchase is made to hold the said bridge or turnpike on the same terms, and with all the rights which belong to the individuals or corporation from which such purchase may be made; provided that said company shall not obstruct any public road without constructing another as convenient as may be.

Right of way.

SEC. 24. When any lands or right of way may be required by said company for the purpose of constructing their road, and for want of agreement as to the value thereof, or from other cause, the same cannot be purchased from the owner or owners, the same may be taken at
321 a valuation to be made by five commissioners, or a majority of them, to be appointed by the circuit court of the county where some part of the land or right of way is situated, and the said commissioners, before they act,

shall severally take an oath before some justice of the peace, faithfully and impartially to discharge the duty assigned them. In making the said valuation the commissioners shall take into consideration the loss or damage which may occur to the owner or owners, in consequence of the land being taken or the right of way surrendered; and also the benefit and advantage he, she, or they may receive from the erection or establishment of the said road or works and shall state particularly the nature and amount of each; and the excess of loss and damage over and above the benefit and advantage shall form the measure of valuation of the said land or right of way. The proceeding, of said commissioners, accompanied with a full description of the said land or right of way, shall be returned under the hands and seals of a majority of the commissioners, to the court from which the commission issued, there to remain of record. In case either party to the proceedings shall appeal from the valuation to the next session of the court granting the commission and give reasonable notice to the opposite party of such appeal, the court shall order a new valuation to be made by a jury who shall be charged therewith, in the same time or as soon as practicable, and their verdict shall be final and conclusive between the parties, unless a new trial shall be granted; and the lands or right of way so valued by the commissioners or jury shall vest in the said company in fee simple, so soon as the valuation may be paid, or when refused may be tendered.

322 When there may be an appeal, as aforesaid, from the valuation of commissioners by either of the parties, the same shall not prevent the work intended to be constructed from proceeding; but when the appeal is by the company requiring the surrender, they shall be at liberty to proceed in their work only on condition of giving to the opposite party a bond, with good security, to be approved by the clerk of the court when the valuation is returned, in a penalty equal to double the said valuation, conditioned for the payment of said valuation and interest in case the same be sustained, and in case it be assessed for the payment of the valuation thereafter to be made by the jury and confirmed by the court: Provided, That when the land cannot be had by gift or purchase, the operation of the work are not to be hindered or delayed during the pendency of any proceedings to assess its value, as aforesaid, nor shall any injunction or supersedeas be awarded by any judge or court to delay the proceedings of said work.

SECT. 25. In the absence of any contract with the company in relation to the lands through which the said road may pass, signed by the owner thereof, or by his agent, or any claimant or person in possession thereof, which may be confirmed by the owner, it shall be presumed that the land upon which the said road may be constructed, together with a space of one hundred feet on each side of the center of said road, has been granted to the company, shall have good right and title thereto, and shall have, hold, and enjoy the same as long as the same be used only for the purposes of the road, and no longer, unless the person or persons owning the said land at the time that part of the road which

may be on said land was finished, or who, claiming
323 under him, her, or them, shall apply for an assessment for the value of the said lands, as hereinbefore directed, within five years next after that part of said road was finished; and in case the said owner or owners, or those claiming under him, her, or them, shall not apply for such assessment within five years next after the said part was finished, he, she, or they shall be forever barred from recovering the said land, or having any assessment or compensation therefor: Provided, Nothing herein contained shall effect the right of *feme coverts* or infants until two years after the removal of their respective disabilities.

Forfeiture of intrusion on road.

SEC. 26. If any person shall intrude upon said railroad or any part thereof, by any manner of use thereof, of the rights and privileges connected therewith, without the permission or contrary to the will of said company, he, she, or they shall forthwith forfeit to said company all the vehicles that may be so intruded on said road, and the same may be recovered by suit at law, and the person or persons so intruding may also be indicted for misdemeanor, and upon conviction fined and imprisoned by any court of competent jurisdiction.

Punishment for damaging road.

SEC. 27. If any person shall willfully and maliciously distroy, or in any manner hurt, damage, or obstruct the said railroad, or any bridge or vehicle used for or in the transpo'tation therein, such person or persons so offending shall be liable to be indicted therefor, and on conviction shall be imprisoned not more than six nor less than one month and pay a fine of not less than twenty dollars, and shall be further liable to pay all the expenses of repairing the
324 same, and it shall not be competent for any person so offending against the provisions of this clause to defend himself by pleading or giving in evidence that he was the owner or agent, or servant of the owner of the land where such destruction, hurt, damages, injury, or obstruction was done or caused at the time the same was caused or done.

Nuisance.

SEC. 28. Every obstruction to the safe and free pas'age of vehicles on the said road shall be deemed a public nuisance, and may be abated as such by an officer, agent, or servant of the company, and the person causing such obstruction may be indi'ted and punished for erecting a public nuisance.

Rate of storage.

SEC. 29. That said company shall have the right to take at the store-houses they may establish or annex to their road all goods, wares, merchandise, and produce intended for transpo'tation, prescribe the rules of propriety, and charge and rec'ive such just and reasonable compensation for storage as they, by rules, may establish (which they shall cause to be published), or as may be fixed by agreement with the owner, which may be distinct from the rates of transportation. Provided, That said company shall not charge or rec'ive storage on goods, wares, merchandise, or produce which may be delivered to them at their regular depositories for immediate transportation, and which the company may have the power of transporting immediately.

Dividends.

SEC. 30. The profits of the company, or so much thereof as the board of directors may deem advisable, shall when the affairs of the company will permit be semi-annually divided among the stockholders in propo'tion to the stock each may hold.

Banking and insurance.

SEC. 31. That said company is hereby expressly prohibited from carrying on any banking operations, but may effect insurances on lives and property transported on the road.

Obstruction of roads.

SEC. 32. Whenever in the construction of said road it shall be necessary to cross or intersect any established road or way, it shall be the duty of the company to construct said road across such established road or way so as not to impede the passage or transportation of person or property along the same, or when it shall be necessary to pass through the land of any individual, it shall be their duty to provide for such individual a proper wagon-way or way across said road from one part of his land to the other.

Powers.

SEC. 33. Said company shall possess such additional powers as may be convenient for the due and successful execution of the powers granted in this charter, and for the successful construction and management of the work.

Amendment of charter.

SEC. 34. This charter shall be amendable from time to time by the legislature whenever the president and directors shall unanimously petition for amendments, specifying in the petition the nature of such amendments, and when such amendments shall be adopted by the legislature and submitted to the directory and be accepted and adopted unanimously by the president and directors they shall be obligatory on the stockholders, and not otherwise.

SEC. 35. The president, directors, clerks, agents, officers, and servants of said company shall be exempt from military duty, except in cases of invasion and insurrection, and shall also be exempt from serving on juries and working on public roads.

Exemption of officers.

Purchase of slaves.

SEC. 36. The said company shall have full power and authority to purchase and own such number of slaves as may be necessary for the construction of the said road and for keeping the same in repair.

Dissolution.

SEC. 37. If, by decree or otherwise, the said corporation shall be dissolved, the president and directors of said company are created trustees, with such powers only as may be necessary to collect the debts due the company, preserve the property, pay the debts, and distribute the property and effects of the company to those who may be entitled thereto under the charter.

Exemption from taxation.

SEC. 38. The capital stock of said company shall be forever exempt from taxation, and the road, with all its fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, shall be exempt from taxation for the period of twenty years from the completion of the road, and no longer.

When to be completed.

SEC. 39. The railroad authorized by this act shall be commenced within three years after the passage of this act, and shall be finished within six years thereafter; otherwise the charter hereby granted shall be void.

Branch road.

SEC. 40. Any individual or individuals, company or body corporate, with the permission of the legislature of this State, may hereafter construct branches to unite with the said Memphis and Charleston Railroad, and it shall be the duty of said company, when required, to receive on their road the full-loaded freight cars from such branches and transport the same to their destination, and to receive
327 them without changing the loads thereof, or charging for transportation of the goods, wares, merchandise, and produce therein, any greater rate of freight that they charge for similar goods, wares, merchandise, & produce in their own cars: Provided, That the company shall not be compelled to receive such cars on their road unless they are constructed in the same manner and are of equal length with their own cars, of which the engineer of the main road shall be the judge. And provided, That the company shall not be required to receive any car from such branches without receiving for at least twenty miles' transportation. And provided, also, That the said company shall be entitled in all respects to similar and equal privileges on any branches constructed to unite with their road, subject to the same restraints.

SEC. 41. Be it enacted that said railroad shall commence at or near where Union street crosses the La Grange and Memphis Railroad, in the town of Memphis, the place where the depot of said La Grange and Memphis Railroad is now situated; thence running in an easterly direction to such point on the southern boundary line of the State of Tennessee, or such point on the Tennessee River in said State as the said Memphis & Charleston Railroad Company, when organized, may determine to be the most favorable route to form a continuous railway communication, or railway and water communication, from the city of Memphis to the city of Charleston: Provided, That the company hereby incorporated shall not locate their road on the track of
328 the Memphis & La Grange Railroad without first procuring the consent of the Memphis & La Grange Railroad Company, on such terms as the companies may agree upon; and provided the said Memphis & Charleston Railroad Company shall first pay, or secure to be paid, such sum of money for the interest of the State in the track of the Memphis & La Grange Railroad as may be agreed upon by the board of internal improvement; whereupon the said board shall have power, and are hereby authorized, to convey such interest to the Memphis & Charleston Railroad Company, which transfer shall be made under the advice of the attorney-general of the State: Provided, That nothing herein contained shall be so construed as to fix the point at which said road shall commence or terminate at said city of Memphis: Provided, That nothing herein contained shall be so construed as to authorize the company herein incorporated to lay off and construct the road mentioned in the charter until such company shall have first purchased of the State the interest which she owns in the Memphis & La Grange Railroad Company. And provided farther, That said commissioners, under the sanction of the

attorney-general of the State, shall have power to take stock in said company to the amount of the interest of the State, or require the payment to be made in money, as they in their discretion may think will best promote the interest of the State.

BRODKINS CAMPBELL,
Speaker of the House of Representatives.
H. M. WATTERSON,
Speaker of the Senate.

Passed February 2, 1846.

Filed Dec. 23d, 1875.

G. R. HILL, *Clerk.*

329 *Petition for appeal.*

MEMPHIS & CHARLESTON RAILROAD COMPANY
vs.
NARCISSA SCRUGGS ET AL.

To the honorable the Supreme Court of the United States:

The appeal of Narcissa Scruggs, the above-named defendant and appellant, and James Matthews and of Elliott R. Matthews, sureties for Narcissa Scruggs, and against whom a decree has be'n rendered in the above cause, respectfully showeth that upon the day of , 1875, the above-named complainant filed its bill in the chancery court of Alcorn County, Mississippi, against the above-named defendant and appellant, the substance of which is as follows:

After setting out its creation as a corporation and referring to the various acts granting and amending its charter, complainant states that on the 7th day of July, 1857, one John W. Scruggs, now deceased, and Samuel Tate, then president of the said company and assuming to act for it, entered into a written contract signed by Tate, but not by Scruggs, whereby it was agreed that Scruggs should build with his own means a hotel at Corinth, Mississippi, on land belonging to the company, pay to the company an annual rent of $250.00 for the use of the ground, and keep a first-rate eating-house there, and board all officers and employees of the company at the usual rates of other houses along the road.

330 If the company should become dissatisfied with the character of the house it retained the right of taking possession of it & paying Scruggs its value at the time, & if Scruggs became dissatisfied with the schedules or management of the company he had the right to surrender said improvements and require the company to pay him their value at the time of such surrender; in each case the property to be valued by disinterested parties. This arrangement was to be binding as long as it was agreeable to both parties, & the improvements were to be erected according to the plan and to the satisfaction of the general superintendent of the company.

Scruggs erected the improvements as agreed and occupied the hotel until April 21st, 1871, when he and M. J. Wicks, then the president of company, agreed to a termination of the lease, and on that day entered into a written submission of the matter to arbitrators, the award to be paid on surrender of the property. About this time, or shortly before, Scruggs conveyed his interest under the contract to his wife, Narcissa

Scruggs, and she was made a party to the submission to arbitration. On the 21st April, 1871, the arbitrators made an award in writing, by the terms of which complainant was to pay Narcissa Scruggs $31,666.66 for all of the improvements, and upon the payment of said sum she should deliver to complainant the said property; that under the
331 original contract J. W. Scruggs acquired a perpetual lease of the ground on payment of an annual rent of $250.00, subject to be terminated by either party on the condition set forth in the contract; and that said sum was to be paid as the value of the property surrendered. Subsequently, Narcissa Scruggs filed her bill in this court, asking that the award be entered as the decree of the court under the articles of submission. M. J. Wicks, as president of the company, filed an answer to the bill. The said chancery court of Alcorn County sustained the bill and the award was made its final decree January 8th, 1872. On appeal to the supreme court of Mississippi the decree was affirmed Decem. 14th, 1874.

Bill further alleges that the amount due the company for ground rent was not included in the award or in the submission to award, but was expressly reserved for inquiry, and when ascertained was to go as a credit on the ascertained value of the property. That there is due on ground rent about $5,400.00, to which the company is entitled as a credit, and no reference has yet be'n made to ascertain the exact sum so due. That the award fixed the 21*th* April, 1871, as the day of surrender, and the final decree of this court fixed the same day and awarded interest to Narcissa Scruggs from that day on said $31,666.66 at 6 % per annum, &
332 gave Narcissa Scruggs a lien on the property for said recovery, & provided that if the said sum was not paid in 30 days the property should forthwith be sold and the proceeds applied to its payment. The decree of the supreme court expressly affirms this decree of the chancery court of Alcorn County. Complainant insists that under these decrees it is entitled to the ground rent of $250.00 per annum up to April 21st, 1871, and to the full reasonable rental value of the property after that time to the filing of this bill, as the property has not be'n yet surrendered. That for the year 1871 the rent was worth from $5,000.00 to $7,000.00 for 1872 it was actually rented for $6,000.00, and for 1873 & 1874 for something less each year. So that complainant is entitled a credit of not less than $25,000,00 of the actual rents; that Narcissa Scruggs is a non-resident of Mississippi, and has no property in the State other than the decree against complainant, and complainant is informed that she has no other property anywhere subject to her debts. That the decree obtained by her awards no execution, but simply provides for a sale of the property; if the debt is not paid in thirty days Narcissa Scruggs has caused execution to issue against complainant & its sureties on its appeal bond, which is illegal, & will be to complainants irreparable injury if she is permitted to collect the full amount after decree, because a large part of it has already be'n paid to her in rents, and she is a non-resident and has no other
333 property than the decree. Complainant insists that it is entitled to the ground rents up to April 21st, 1871, and the full rents since that time, and these amounts should be ascertained & credited on the decree. If not entitled to these amounts as payments he is entitled to them as an offset against the decree, and as Narcissa Scruggs is a non-resident & without other means the court will restrain her from collecting the decree until the amounts due for rents be ascertained If not entitled to said amounts as a set-off, complainant is entitled to them as a debt due it from Narcissa Scruggs, and as she is a non resident without other means complainant is entitled to an attachment of said

fund for the satisfaction of his claim. That Narcissa Scruggs has instituted an action of debt on said award in the circuit court of Alcorn County, and complainant is entitled to stay the said execution until she elects in what court she will enforce her rights. Complainant insists that under its charter its president had no power, & the board of directors could give him none, to contract for the building of a hotel on its ground, & the contract between Jno. W. Scruggs & Sam'l Tate was therefore void; and being void the articles of submission to arbitration was also void; & that this question of validity did not arise in the case submitted to the arbitrators & court & is as yet wholly undecided; that complainant is not indebted to defendant in any sum and asks to have
the original contract, articles of submission, award, and decrees
334 declared nullities. The bill makes Narcissa Scruggs and complainant's sureties on its appeal bond parties defendant, & prays that she be enjoined from collecting the $31,666.66, & that the decree be declared invalid against complainant & its sureties and for a stay & quashing of the execution. Or that the collection of the decree be stayed & the amount of ground rents due by Jno. W. Scruggs up to April 21st, 1871, & the full rents due complainant after that time be ascertained & deducted from said decree. Bill also prays for attachment of the fund in its hands, and an injunction against Narcissa Scruggs & her attorneys and agents from collecting or attempting to collect said decree; also a prayer for general relief.

Upon this bill an order was made by the chancellor for the writs of injunction & attachment prayed for the issue upon the execution by complainant of the proper bond. Then follows the bond and the writ of injunction.

The answer of Mrs. Narcissa Scruggs to the foregoing bill is in substance as follows: She admits the charter of the company and the contract between the company and Jno. W. Scruggs mentioned in the bill, but denies that Samuel Tate and the president & board of directors had not the power to enter into this contract. That it is admitted in said bill that she filed her bill in the chancery court of Alcorn County, Mississippi, on the 2d day of May, 1871, on
which a final decree was rendered and afterwards affirmed by
335 the supreme court of the State. The entire record of this suit is made a part of the bill filed in this cause. It appears distinctly that the R. R. company appeared in that suit and filed its answer, and distinctly admitted the execution and validity of the contract with Jno. W. Scruggs and claimed the benefit thereof. No objection was made to the authority of Samuel Tate or the president and board of directors to make and authorize such a contract, but this power was distinctly admitted and affirmed, and the said company is therefore forever barred & estopped from setting up such matter in this bill. She admits that on the 24th February, 1871, another agreement was entered into by said company and herself in which John W. Scruggs joined her as her husband, reciting the original contract and the fact that Jno. W. Scruggs had conveyed to her all of his interest in the property. By this latter agreement the matter was submitted to arbitrators to decide the construction of said contract and the value of the property to be paid on its surrender. She denies that the transfer to her by her husband was illegal and that she was not legally made a party to the agreement to leave the matter to arbitration, and avers that both were valid and binding, and that the answer of the company filed in the said chancery suit distinctly admitted the validity of the conveyance to her & her right and title, but denied the validity of the articles of submission

on the ground that she was a married woman. These questions were in said suit fully and finally decided and the company is forever
336 estopped and precluded from setting up such matter in this bill. She admits that on the 21st April, 1871, the arbitrators made an award which among other things decided that the company should pay her the sum of $31,666.66, and upon this payment she was to surrender the property to the company and make to it a quit-claim deed to all her interests in it, but she was to retain a lien on the property until the said sum of money was paid. That it distinctly appears from said record, and it is true, that on the day the award was rendered she offered to surrender the property and execute the deed, and demanded payment of the sum of money awarded her; and the company then and there refused to receive the property or to pay her anything, but repudiated their agreement and the award. When she filed her bill in the chancery court aforesaid she again offered in it to surrender the property, and filed with the bill a quit-claim deed to all her interests it, and offered to do everything required of her by the articles of submission and the award. She has ever since be'n ready and anxious to surrender the property upon the payment to her of the money due. She has be'n left a widow with a large family & has had no use for the property, but wanted only her money. From the persistent opposition of the company the decree in her favor was not rendered in the chancery court of Alcorn County until January 8th, 1872, & the company then took an appeal, and the decree of offer made by the supreme court was not rendered until December 14th, 1874. During this long time she was not only deprived of her money and subjected to the vexations
337 of prolonged litigation but was compelled to pay out large sums of money as counsel fees and for other expenses, and she submits that the said corporation should not now be allowed to take advantage of its own wrong & have the rents of the property during that time, when at any time after the award was rendered it could have had the property by paying her the money it justly owes her. She denied that the award and the decrees of the said chancery court and the supreme court all fix the day for surrender as the 21st April, 1871, & that the company is entitled to ground rent of $250 per annum up to that time, & the rental value of the property after then to the date of actual surrender, but avers that they all fix the 21st April, 1871, as the day on which the money should be paid to her, & the property was only to be surrendered on the day the money was paid—that was the day fixed for surrender and none other. The award gives her interest on the sum awarded according to the statute, & provides that the company should not have possession nor rents nor profits until the award & interest were paid. That by said decree and judgment it was adjudicated that she had a perpetual lease of the property on certain conditions which were admitted to have be'n performed. That the company should pay her $31,666.66, with interest from April 21st, 1871 and until the payment of the said sum of money she should retain the possession and use of the property, and upon such payment she should surrender it and deliver to the company a quit-claim deed to all
338 of her interest in it. This decree was in all things affirmed by the supreme court. She denies that the yearly rental of the property for 1871, was from $5,000.00 to $7,000.00, and that it was leased for the year 1872 for $6,000.00. She made a contract with one Chapman for that amount, but he directly afterwards became bankrupt and only paid $500.00; for the years 1873 and 1874 the property was rented for $6,349.95, of which only $4,349.95 was paid. The com-

pany refused to use the hotel as an eating-house, & she is informed and believes used its influence with the Mobile & Ohio Railroad Company to induce it to do the same, and consequently the property became greatly reduced in value and out of repair. She denies that the company is entitled to a credit of $25,000.00, or of any sum on said decree. She denies that it is entitled to any credit thereon for ground rent, but avers that this matter was not submitted to the arbitrators, because her husband claimed that the company owed him for board of the employees and for damages for violations of the original contract more than it claimed for ground rent, and it was agreed that this question should be left a matter in chancery, and if he should find that anything was due for ground rent it should be credited on the award. That afterwards the whole matter was brought by the company directly before this court in the former suit mentioned and then by it settled in her favor, and the claim for ground rent disallowed. The company is therefore precluded from setting it up again. That the claim is also barred by the statute of
339 limitation. Besides this it is a mere money demand and the company has a full and an adequate remedy at law. She admits that she is a non-resident of the State of Mississippi, and has no property here other than her interest in the property mentioned, but denies that she has no property elsewhere liable to her creditors. Admits that she has retained possession of the property, as she has a right to do & was forced to do by the refusal of the company to pay her the money due her and take possession of it itself. That the rents received by her were not claimed by the company in the former suit, and it is estopped from claiming them now by the decree therein rendered. If the company is entitled to anything on account of such rents it is a mere demand for money and it has a complete remedy at law, and this court has no jurisdiction of the question. The claim is also barred by the statute of limitations. She denies that the decree of the court in the former suit did not award to her the right to have execution issued. Admits the issuance of the execution against the company and its sureties on its appeal bond, as she had a right to have done. She denies that the supreme court only awarded a mandate to this court, but avers that it rendered a final & formal judgment in her favor & upon this judgment she caused the execution to issue. She denies that any injury will result to the company for the enforcement of this execution other than the inconvenience of paying a just debt. Admits that she instituted
340 a suit at law for damages for the company's failure to perform the award, as under the circumstances of the case she had the right to do, but this law suit has been long since dismissed. She denies that the company did not have the corporate authority through its president and board of directors to enter into the contract with Jno. W. Scruggs. She denies that the articles of submission did not settle the question of the validity of that contract, and avers that its validity was also finally adjudicated & established in the chancery suit before mentioned. As the entire matter was then before the court & its validity there admitted by the company, it is therefore now estopped from setting up that defence. By that suit was also established the validity of the contract of submission, & this decree was in all things affirmed by the supreme court. That over two years have elapsed since the final decree was rendered in that cause, and it cannot now be received or reversed. She insists that this court has no jurisdiction of the matters contained in the bill. Upon the petition of the company, the case was at this stage removed to the United States district court for the northern district of Mississippi. The first step in the United States dis-

trict court was the filing of a motion to remand the cause to the chancery court of Alcorn County, because the United States court
341 had no jurisdiction—the company and Narcissa Scruggs were both citizens of the State of Alabama; and because two of the defendants were citizens of Mississippi—affidavits of their citizenship was also filed. This motion was made by defendant, Narcissa Scruggs, and was overruled by the court. Mrs. Scruggs also made a motion to dissolve the injunction granted in the case, and several affidavits were filed by both parties pending this motion. The grounds upon which the motion was based were, no equity on face of bill; the answer denies all its material allegations; all the questions raised are res adjudicata, & because complainant has a complete remedy at law. Upon this motion the court on the 9th of July, 1875, rendered a decree dissolving the injunction as to $21,336.99 and retaining it as the ballance of $20,000.00, & ordering execution to issue if the first-named sum was not paid by the company in twenty days the date of the decree against said company and its surities; a petition for rehearing & a motion to reconsider this order were both filed by complainant, overruled by the court. A refunding bond having been required of Narcissa Scruggs on the 22d day of July, 1875, she executed & filed such a bond for the sum of ten thousand dollars, with appellant Elliott R. Matthews as her surity therein, conditioned to pay to said company all the money she might collect on the decree of said State courts, which the said United States court by its decree should order her to pay on the 22d July
342 1875, a motion a new injunction bond was made Narcissa Scruggs and sustained, and a motion for the appointment of a receiver made by said company was sustained also, and the court appointed as such receiver Thos. P. Young, jr., of Corinth, Mississippi. The additional injunctional bond required was filed by the company Aug. 2d, 1875, & approved by the court. On the 12th August, 1875, the said receiver also filed his bond. On the 24th of September, 1875, the company filed its bill of interpleader, reciting the original bill and incorporating it, and stating that according to the order of the court it had paid upon the execution issued $19,011.23 to the marshall of the court and was ready to pay to Mrs. Scruggs the entire sum it was ordered to pay, but that one J. H. Viser had served an attachment and garnishment on said company, by which the hotel in dispute had been attached & the company garnisheed to reach whatever sum might be owing from it to her. Upon final settlement of the dispute between them said company offered to pay all due Mrs. Scruggs under the order of this court, provided she would release it from all liability upon said attachment or garnishment, but this was refused. W. F. Dowd has also notified said company that he has a lien on said money ordered to be paid, and notwithstanding the court ordered the money paid to Narcissa Scruggs or to Sale & Dowd, her attorneys, the company has be'n notified by Mrs. Scruggs not to pay any part of said money to said attorneys under these circumstances. All the company could do was to pay the money to the marshall, which it did. It now tenders into court the ballance
343 due of $2,510.83, & prays that the execution may be stopped; that said Viser be enjoined from interfering with the company, and that Narcissa Scruggs, J. H. Viser, & W. F. Dowd be made parties defendant to this bill, and that they be required to enterplead & settle their rights to the money before this honorable court. The execution was ordered to be returned and the injunction against Viser was granted as prayed for in the above bill of interpleader. To this bill J. H. Viser filed an answer, stating that it was true that there was an attach-

ment suit pending on the law side of this court between himself & Mrs. Scruggs, in which the railroad company has been garnisheed as her debtor, & there is also a suit pending in the chancery court of Alcorn County between the same parties, in which the company has be'n enjoined from paying to Mrs. Scruggs the amount of its indebtedness to her until the debt due her, & which is a lien on the property, is satisfied. That Mrs. Scruggs owes him $5,029.46, & asks that the court order the company to pay him said sum on Dec. 6th, 1875. The company, by permission, filed nunc pro tunc its replication to the answer of Mrs. Scruggs; Viser also filed a cross-bill to the amended bill and bill of interpleader of the company, which in substances repeats his answer & states that the debt due him is secured by mortgage on the hotel, & he has obtained a decree of the chancery court of Alcorn County subjecting the income of the property to his debt; that Mrs. Scruggs is a non-resident & has no other means than her interest in this property, & prays that the company be required to pay him out of the funds
344 on hand, & that an injunction issue restraining the company from paying Mrs. Scruggs until his debt is satisfied.

A demurrer to the bill of interpleader having be'n filed by W. F. Dowd & Mrs. Scruggs & overruled by the court, they filed separate answers to said bill on the 24th December, 1875. In the meantime Viser filed a second cross-bill, setting forth the same facts substantially as contained in the first though more in detail, and among other things stating that the trust deed executed to secure his debt upon the hotel, furniture, &c., by Mrs. Scruggs and her husband was at the time defectively acknowledged, and was afterwards, on the 15th of April, 1871, reacknowledged properly. This was after the agreement to submit their matters to arbitration had been entered into by Mrs. Scruggs and the railroad company, which was on the 24th of February, 1871. The answer of Mrs. Scruggs to the bill for interpleader alleges that the debt due Viser & upon which the company had be'n attached was a debt of her late husband, and that she signed the note to Viser as her husband's surety. There is, therefore, no personal liability resting upon her, and the income only of her property is bound. That the contract entered into by her with the company to submit their matters to arbitration was made in February, 1871, while the mortgage on the property was not properly executed and acknowledged until April, 1871, & there could be no income liable to Viser's debt, & the company cannot be in danger of liability from the garnishment in favor of Viser; &, besides, this claim upon the
345 company is a purely personal one, and Viser has no personal claim upon her. That there is no controversy between her and her attorneys, Sale & Dowd, but they are fully agreed upon the amount of the fees due them, and her agent, E. R. Matthews, had paid W. F. Dowd all he claims to be now due. That the matters contained in the bill for interpleader are not connected with this cause, and cannot be engrafted upon it by filing this bill as an amendment to the original bill. She denies that any garnishment ever issued from the chancery court of Alcorn County against the company, as is stated in the bill for interpleader. The answer of Sale & Dowd is substantially the same as that of Mrs. Scruggs. The answer of Mrs. Scruggs to the cross-bill of Viser insists that as she was only a surity on his debt, nothing can be liable to its payment but the income of the property mortgaged, and that as the contract with the company was entered into before the mortgage was properly executed there was no income subject to his debt. Moreover, the company claims the rent of the property, which is the

only income, and is now prosecuting this suit for it. She is certainly not liable to both for the rents; that Viser's debt has be'n paid, and his claim is unjust. On December 24th, 1875, the court made substantially the following decree: That the validity of the original contract between Jno. W. Scruggs & the company was admitted in the articles of
346 submission to arbitration, & the company could not now undertake to vacate the decree of the chancery court of Alcorn County on that ground; and, further, that the contract was within the corporate power of said company. But that the company is entitled to the reasonable rents of the property from the 11th day of May, 1871, up to the time it went into the hands of the receiver. The questions of ground rents, and of the rent of the property, from April 21st, 1871, to May 11th, 1871, are reserved for final hearing. The matters were then referred to a master, with orders to report at the ensuing term of the court.

On the 25th December the court decreed that, as J. H. Viser had, on the 20th December, 1875, obtained in this court a judgement against Narcissa Scruggs for $1,382.05, and the said company had been duly summoned as garnishees for that sum, the clerk of this court, Geo. R. Hill, is ordered to pay out of the funds in his hands belonging to Mrs. Scruggs the above-named judgment and the costs of that suit, and the balance of the money paid by said company for Mrs. Scruggs he should pay over to Sale and Dowd, her attorneys.

In March, 1876, the railroad company filed its answer to Viser's cross-bill, stating that it knew nothing of his and Mrs. Scruggs' contracts, but that when he took a trust deed upon the hotel he took it knowing that she had only a leasehold interest in it, that this interest terminated by the agreement of Feb'y 24th, 1871, and all that was then left to be determined was the value of the property. Said company filed
347 the bill of interpleader in order that it might be relieved of liability in the matter, & that J. H. Viser & Narcissa Scruggs might settle among themselves & before this court the disposition of the money, which both of them claimed. In April, 1876, on petition of the company, the receiver was discharged. On the 18th December, 1876, the question between J. H. Viser & Mrs. Scruggs were referred to Geo. R. Hill, clerk and master, with orders to state an account between Mrs. Scruggs and J. H. Viser by December 22d, 1876. On the 20th December said master filed his report, showing that Mrs. Scruggs was indebted to Viser in the sum of $4,130.29, but on May 19th, 1877, he filed another report, under another reference, showing an indebtedness of only $3,807.27. On the 18th May, 1877, said master also filed a report showing an indebtedness from Mrs. Scruggs to the Memphis & Charleston Railroad Company of $2,615.36. To these reports there were various exceptions taken. The court overruled all of the exceptions to the latter report except one, but in part sustained that, so as to reduce the amount found to be due the railroad company $1,959.75, and also disallowed the ground-rent claim. This left Mrs. Scruggs in debt to the company the sum of $179.74. To the master's report stating the account between Mrs. Scruggs and J. H. Viser all of the exceptions were overruled.

On the 9th day of July, 1877, the court rendered the final decree in the case, ordering that Narcissa Scruggs, principal, and James Matthews and E. R. Matthews, sureties, upon her refunding-bond, pay within ninety days from the date of the decree to the Memphis & Char-
348 leston Railroad Company, the sum of $179.00, with interest from date, and that they do pay as such principal and sureties within

ninety days from date to said railroad company for the use of James H. Viser, the sum of $3,807.27, with 10 per cent. interest from date; that the said company and Mrs. Scruggs do each pay one-half of the costs of this suit, except that incurred between Narcissa Scruggs & James H. Viser, all of which must be paid by Narcissa Scruggs, and all the cost on the interpleader & cross-bill; that all claims, demands, & interest of Narcissa Scruggs & her mortgagee, J. H. Viser, are and have been satisfied as against the Memphis & Charleston Railroad Company, and the same as a lien or mortgage on the Corinth Hotel property are extinguished, and the company hold said property free from any such lien, & the injunction against Narcissa Scruggs & James H. Viser against further prosecution of any suits against said company is hereby made final; that said Sale & Dowd have no lien for fees as against said company.

The record also contains the depositions of witnesses taken & filed in this cause both in this court, and in the chancery court of Alcorn County, Mississippi. Wherefore the appellants appeal from the whole of said decree of said district court of the United States, and respectfully pray that the decree of said district court, and the bill, answer, pleadings, depositions, evidence, & proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause
349 anew, and that the said decree of the district court, and every part thereof, may be reversed, and a decree made dismissing said libel, with costs, or such other decree as to the said Supreme Court shall seem just.

Dated July 2d, 1879.

LAMAR, MAYES & BRANHAM,
Solicitors for Appellants.

The foregoing petitioners having entered into bond, with R. F. Matthews as surety thereto, in the penal sum of five hundred dollars, conditioned for the payment of the costs of this appeal, said appeal is granted, but not to operate as a supersedeas.

This July 5th, 1879.

R. A. HILL, *Judge.*

Filed this 2d day of July, 1879.

G. R. HILL, *Clerk.*

And on said 2 day of July, 1879, a bond was filed in said cause in the words & figures following, to wit:

350 And also, on the same day (the 2d day of July, 1879), a bond was filed in said cause, which is in the words and figures following, to wit:

Appeal Bond.

Supreme Court of the United States.

MEMPHIS AND CHARLESTON RAILROAD COMPANY
vs.
NARCISSA SCRUGGS.

Know all men by these presents, that we, Narcissa Scruggs and Elliott R. Matthews, of the county of Madison, State of Alabama, & R. F. Matthews, of Lowndes Co., Mississippi, are held and firmly unto

the Memphis and Charleston Railroad Company in the sum of five hundred ($500) dollars, to be paid to the said Memphis and Charleston Railroad Company, to which payment well and truly to be made, we bind ourselves, and each of us jointly & severally, and our and each of our heirs, executors, & administrators, firmly by these presents. Sealed with our seals. Dated this 14th day of May, A. D. 1879.

Whereas the above-named Narcissa Scruggs and Elliott R. Matthews have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled action by the district court of the United States for the northern district of Mississippi:

Now, therefore, the condition of this obligation is such that if the above-named Narcissa Scruggs and Elliott R. Matthews shall prosecute their said appeal to effect, and answer all costs if they should fail to
351 make good their plea, then this obligation to be void, otherwise to remain in full force and virtue.

NARCISSA SCRUGGS. [SEAL.]
ELLLIOTT R. MATTHEWS. [SEAL.]
R. F. MATTHEWS. [SEAL.]

STATE OF ALABAMA,
Madison County:

I, William Richardson, judge of the court of probate in and for said county & State, and ex-officio clerk of the court of probate of said county, (which said court of probate is made by law a court of record) do hereby certify that Narcissa Scruggs & Elliott R. Matthews, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged to me, on this day, that being informed of the contents of the conveyance they executed the same voluntarily on the day the same bears date.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court of probate, at my office, in the city of Huntsville, in said county, this the 15th day of May, in the year A. D. 1879, and in the 103rd of American Independence.

[SEAL.] WM. RICHARDSON,
Clerk of Probate.

[One dollar tax on seals—W. R. J. P. C.—State of Alabama, May 15th, 1879.]

THE STATE OF ALABAMA,
Madison County, ss:

I, William Richardson, judge of the court of probate, in and
352 for said county and State, duly elected, commissioned and sworn, do hereby certify that I am ex-officio clerk of the court of probate aforesaid; that my signature above written is genuine, and that the certificate above as such clerk is in due form of law, and signed by the proper officer.

Given under my hand this 15th day of May, A. D. 1879.

WM. RICHARDSON,
Judge of the Court of Probate.

THE STATE OF MISSISSIPPI,
Lowndes County, ss:

Before me, Toby W. Johnston, United States commissioner for the northern district of said State, this day personally appeared the within-named R. F. Matthews, whose name is signed to the within instrument

of writing, and acknowledged that he signed and sealed said instrument for the object and purposes therein indicated. Said R. F. Matthews further acknowledged & made oath that he is worth above his just debts & liabilities & exemptions the sum of money in said bond mentioned.

R. F. MATTHEWS.

Signed and sworn to before me this the 19th day of May, A. D. 1869, and I hereby certify that said R. F. Matthews is worth the sum mentioned in the aforesaid manner, and I approve the said bond.

[SEAL.] TOBY W. JOHNSTON,
U. S. Commissioner for Northern Dist. Miss.

Filed this 2d day of July, 1879.

G. R. HILL, *Clerk.*

353 And afterwards, to wit, on the 5 day of July, 1879, a citation was issued by the judge of said court, which is in the words and figures following, to wit:

Citation for appeal.

By the Honorable Robert A. Hill, judge of the district court of the United States for the northern district of Mississippi.

To the Memphis & Charleston Railroad Company and James H. Viser:

Whereas Narcissa Scruggs and E. R. Matthews & James Matthews have lately appealed to the Supreme Court of the United States from a decree lately rendered in the district court of the United States for the northern district of Mississippi, made in favor of you the said Memphis & Charleston Railroad Company and James H. Viser, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court at the city of Washington on the 13 day of October next, to do and receive what may appear to justice to be done in the premises.

Given under my hand at Oxford, in the northern district of Mississippi, the 5th day of July, in the year of our Lord one thousand eight hundred and seventy-nine.

[S.] R. A. HILL,
Judge of the District Court of the United States for the Northern District of Mississippi.

354 Upon the foregoing citation the marshal made his return in the words and figures following, to wit:

Executed Aug. 27th, 1879, by leaving in the hands of B. B. Collier, railroad agent of the Memphis & Charleston Road, at Corinth, Mississippi, a true copy of the within citation.

J. L. MORPHIS,
U. S Marshal,
By J. W. BELL,
Deputy U. S. M.

UNITED STATES OF AMERICA,
Northern Dist. of Miss.:

This day personally appeared before me, W. H. Dodson, a U. S. com-

missioner for the northern dist. of Miss., J. W. Bell, deputy U. S. marshal, who, being by me duly sworn, deposes and says that he executed the within citation as shown by the above return.

[L. S.]

W. H. DODSON,
U. S. Com'r Northern District of Miss.

Executed this process this day by handing to Chas. Beckley, a person of the family of H. H. Barr, counsel of record for J. H. Viser, who is over the age of sixteen years, at his usual place of abode in said county, such person being then and there willing to receive the same a true copy of this process, said defendant not being found in my district after diligent search.

September 6, 1879.

J. L. MORPHIS,
U. S. Marshal,
By B. P. SCRUGGS,
Dept. U. S. M.

355 UNITED STATES OF AMERICA,
Northern District of Mississippi, ss:

This day, Sept. 6, 1879, personally appeared before me, G. R. Hill, clerk of the district court of the United States for the northern district of Mississippi, B. P. Scruggs, deputy U. S. marshal for said district, who, being first by me duly sworn, deposes and says that he executed the within citation as shown by the above return.

[L. S.]

G. R. HILL,
Clerk District Court of the United States for the Northern District of Mississippi.

Filed Sept. 6, 1879.

G. R. HILL, *Clerk.*

Certificate to transcript.

UNITED STATES OF AMERICA.
Northern District of Miss., ss:

I, George R. Hill, clerk of the district court of the United States for the northern district of Mississippi, hereby certify that the foregoing 355 pages contain a true & perfect transcript of the record & all the proceedings in said court in the case of the M. & C. R. R. Co. v. Mrs. Narcissa Scruggs et al., as fully as the same now appear of record and on file in the clerk's office of said court, except the opinions of the court hereinafter given.

In testimony whereof I hereunto set my hand and affix the seal of said court at my office in Oxford, in said district, on this the 10th day of September, A. D. 1879.

[SEAL.]

G. R. HILL, *Clerk.*

356 *Opinions of the court.*

Opinion of court on motion to dissolve injunction.

In the district court of the United States for the northern district of Mississippi. June term, 1875.

MEMPHIS & CHARLESTON R. R. CO.
v.
NARCISSA SCRUGGS ET AL. } 215.

A. H. Paston for complainant.
W. F. Dowd for Mrs. Scruggs.

This cause is now submitted upon Mrs. Scruggs' motion to dissolve

the preliminary injunction granted by the chancery court of Alcorn County before the removal of the cause into this court, and is made upon bill, answer, and exhibits. The cause not being heard upon the proofs, and none of the rights of the parties being concluded upon the order now to be made, only so many of the allegations made in the bill and answer, and statements appearing from the exhibits, need be stated and referred to as may be necessary to guide the court in the exercise of the discretion given the court, in determining whether or not the injunction should be retained until the final hearing upon the proofs, or should said injunction be modified or dissolved.

Two purposes are stated in the bill as objects sought by it.
357 The first is to have declared void and set aside the award of the arbitrators selected by the parties to construe the lease executed by complainant to J. W. Scruggs, the husband of Mrs. Scruggs, and under whom she claims, and for the value of the hotel and improvements erected under said lease, and for the amount of the value so found and awarded a decree has been made by the chancery court of Alcorn County, and affirmed by the supreme court with interest and damages.

The determination of this question must depend upon whether or not said award and decree thereon concludes the rights of the parties. The examination I have been enabled to give to the proceedings had in said cause from the record thereof, and exhibits filed, I am satisfied that for the purposes of determining this motion, said proceeding did determine and settle the rights of the parties, as follows:

That on the 21 day of April, 1871, the complainant in this cause became liable to pay Mrs. Scruggs the sum of $31,666$\frac{66}{100}$, with interest thereon at 6 per cent. per annum until paid, with a lien upon said buildings and premises until the same shall have been paid and satisfied, together with 5 per cent. damages upon the amount of said decree upon its affirmance by the supreme court.

The second object sought by the bill is to have set off against the amount of said decree or abated therefrom the amount claimed to be due for the ground-rent stipulated in said lease to be paid to said company,
and which it is insisted was not submitted to said arbitrators or
358 embraced in said decree, but was by express agreement in writing excepted therefrom and referred to the clerk & master of said chancery court, the balance found due, if any, to be credited upon the amount of said award; also the rent of said premises since the said 21 day of April, 1871, the said Narcissa Scruggs having remained in the possession of said premises and enjoyed the rents and profits thereof since that time, which is admitted in the answer. It is alleged, as ground of equitable relief, that Mrs. Scruggs is a non resident of the State, and has no property in it save the lien she holds on said premises, and no debts due her in this State save the amount of said decree, and that she is not possessed of property elsewhere out of which said rents can be made, and prays that said rents when ascertained shall be abated from the amount of said decree.

For the purposes of deciding the motion I am satisfied that from the 21 day of April, 1871, the parties did sustain the relation of mortgager and mortgagee towards each other, Mrs. Scruggs holding a debt against the Memphis and Charleston R. R. Co., with a security upon the premises mentioned, and in addition to the lien upon the premises, was entitled to receipts of the rents and profits, to be applied to the payment of said indebtedness. It is contended with great earnestness, zeal, & ability by Mrs. Scruggs' counsel that by the award and decree she was

entitled, not only to the interest upon the award and decree, but to the rents and profits; that the provision was that upon the payment
359 of the amount so awarded and decreed she should surrender the premises. The provision is not that upon the payment of the amount of the award and interest the surrender should be made, so that, to give a strict construction to the provisions stated, no interest could be charged, and Mrs. Scruggs would at most be entitled to the rents in lieu of interest. But she has not so treated her claim under the award and decree, but demands the principal sum and interest, and has obtained a decree from the supreme court, not only for this sum, but for 5 per cent. damages upon its affirmance; she has, by her proceedings, placed herself in the position of a vendor with a lien upon the property sold, prosecuting her bill for the collection of the purchase money for an enforcement of her lien by a sale of the property sold, or, as before stated, by her retention of possession occupies the position of a mortgagee in possession of the mortgaged property, her claim is the purchase money with interest for its detention.

By long and well settled rules without an exception, so far as I am aware, persons occupying this position are required to account for the use and occupation or rents and profits of the mortgaged property so held by them, whether prosecuting a suit for the recovery of the amount secured by the mortgage or upon a bill filed by the mortgager to the decree. The rights of the parties are, the mortgagee, a creditor, is entitled to his money with interest, less the rents after deducting taxes, necessary repairs, or other necessary expenses incurred on ac-
360 count of such property or estate, and when this is ascertained and paid, the mortgager or debtor is entitled to the possession of the property, and, if not paid by him when ascertained, the creditor is entitled to enforce its payment by a sale of the property so held. To take the case out of their well established rules, there would have to be contained in the contract a clear and unmistakable agreement to that effect, even if such a contract could be held binding.

I am satisfied that for the purposes of this motion the complainant must be held entitled to have credit upon or abated from the amount of the decree against it the value of the annual rents of the premises so held, less the taxes and necessary expenses paid upon it accrued since the 21st April, 1871. I am in much greater doubt as to the ground rent claimed before that time, a large portion of which would now be barred, and other portions doubtless subject to set-off; and therefore, without deciding anything in relation to this part of the claim for the purpose under consideration, will place little estimate upon it.

But it is insisted that Mrs. Scruggs, having by her answer denied all the equity charged in the bill, is entitled to a dissolution of the injunction. I do not understand her answer as having denied all the facts constituting the equity set up in the bill. She admits having retained the possession of the property and receiving its rents and profits, and that she has no other property in this State than her lien on
361 said hotel property. For the purpose of determining this motion, I am of opinion that to the extent of these probable rents the injunction should be retained, and as to the residue of the amount of the decree it should be dissolved. What that probable amount is, is difficult to determine; taking the proof upon which the award was given it would be not less than $30,000.00. I am satisfied, however, that those estimates are very extravagant, and that they will not upon a fair estimate exceed $20,000.00, if so much; but as no great injustice can be done Mrs. Scruggs in deferring the payment of that sum until a final hear-

ing, and a dissolution of the injunction for that sum might work a serious prejudice to complainant, the injunction will be so modified as to retain it for the sum of $20,000.00, and dissolve it as to the residue of the amount fixed by the decree of the supreme court; and should said balance not be paid within twenty days, then Mrs. Scruggs may have her execution from this court for such balance against complainant and the sureties in the appeal bond. If Mrs. Scruggs shall retain possession after this year, she must give bond, with sufficient sureties, to account and pay for the rents, should the court so order and decree; and upon her failure a receiver will be appointed.

R. A. HILL, *Judge.*

Filed 9 July, 1875.

G. R. HILL, *Clerk.*

362 *Opinion of court on motion to reconsider decree.*

In the district court of the United States for the northern district of Mississippi, June term, 1875.

MEMPHIS & CHARLESTON R. R. COMPANY
vs.
NARCISSA SCRUGGS ET ALS.

Poston for complainant.
W. F. Dowd for Mrs. Scruggs.

The questions now presented arise upon complainant's application to reinstate that portion of the preliminary injunction dis'olved by the former order of the court, or if that cannot be done to require a refunding bond as a condition of the dissolution.

The questions now presented were ably presented and argued by the distinguished counsel on both sides upon Mrs. Scruggs' motion to dissolve the injunction, and upon this motion have been very exhaustive, and the authorities to sustain the propositions assumed unusually numerous. The facts upon which the questions must be determined being found in the record of the proceedings had in the chancery court of Alcorn County and that of the supreme court affirming the decree of the chancellor, it is difficult to perceive how the question now for consideration can be materially changed upon final hearing.

363 It is admitted by complainant's counsel that if the validity of the lease, the foundation of Mrs. Scruggs' claim, upon which the decree sought to be enjoined was embraced in the pleadings and described by the supreme court, then it is res judicata and conclusive upon complainant, and that the action of the court now sought cannot be claimed so far as it relates to the retention of the injunction for the entire amount of the decree.

This, being the most important question, will first be considered, to determine which we must look to the contract of lease, the submission, award, and decree of the chancellor, affirmed by the supreme court. The substance of the lease is that the complainant leased to J. W. Scruggs, in 1857, a certain piece of ground at the crossing of its road with that of the Mobile & Ohio R. R., in the city of Corinth, upon which Scruggs agreed to build an eating house for the convenience of the passengers on complainant's road, and its employes, &c., the house to be built as complainant's officers might direct, and to be kept in a manner satisfactory to them, and for which Scruggs was to pay $250 per annum ground rent and receive the profits of the establishment so long as the parties might

mutually agree; but if the complainant's trains should not be run to the satisfaction of Scruggs, or Scruggs should not beep the house to the satisfaction complainant, then, upon payment of the value of the buildings, Scruggs should surrender them to complainant. In 1871 a mutual agreement upon the part of Mrs. Scruggs, who had succeeded to
364 the rights of her husband, to surrender possession, and of complainant to pay the value of the buildings, was entered into; but there was a disagreement as to the proper construction to be given to the lease, and the amount to be paid according to the stipulations of the lease. To settle these questions the parties, in accordance with the terms of the lease, referred the matters in dispute to referees, which reference was made in writing, which writing recited the agreement of lease without controverting its validity, and thereby virtually admitting its binding force, but reserving all other questions between the parties not so submitted or admitted.

The contract of lease was the foundation of the whole proceeding; the true construction of the lease, and the amount which should be paid according to its terms, were the questions submitted. The first, a question of law to be determined from the instrument itself, and the last a question of fact to be determined from the proof; the referees by their award determining the lease to be a continuing or perpetual one subject to be determined by either of the contingencies stated in it.

This award cannot be presumed to have been made otherwise than upon the admission of the legality of the lease, and the binding force of the agreement of submission, and consequently it cannot be held that the legality of either was a reserved question. The award being within the provisions of the submission concluded the parties to it, as much so as would the judgment or decree of a court, but, not being self-executing, could only be enforced by being made a decree of the chancery court, according to the agreement of the parties, by force of
365 the provisions of the statute, or the order and decree of the court.

Mrs. Scruggs, not relying upon the enrollment of the award on the minutes of the court alone, filed her bill in the chancery court of Alcorn County against the present complainant, reciting the contract of lease, the submission and award, and praying a specific enforcement of the award. To this bill the company filed its answer, admitting the execution of the lease without objection as to its legality and binding force, but denying the binding force of the award upon the alleged ground that Wick, the then president of the company, had authority to make the submission, and setting up other matters of defence. The legality of the lease certainly was an important element of complainant's right to the relief sought by her bill, indeed lay at its foundation, and if not estop'ed by the submission without objection as to its legality, the defendant in that suit certainly might, and, of ultra vires, as now contended, ought to have set it up as a defence to the relief sought by the bill, and if set up and established would have constituted a complete defence.

It is contended by complainant's counsel that this being affirmative matter could not have been set up by answer, or even by cross-bill, as the object would have been to set aside and have declared void & null this contract, and a number of authorities are cited to sustain the position; but when considered, I am of opinion, fail to sustain the position assumed. The purpose of the bill was simply to enforce the pay-
366 ment of the sum awarded. If the contract and agreement of the parties upon which the award was based was void for want of

authority in the company to make it, then a court of equity would have had no more right to enforce it than it would to enforce a void judgment or other evidence of debt void for any cause. It is true that had the company desired any affirmative relief, such as a recovery of the ground rent or restoration of the possession of the premises, such relief could not be had upon answer, but upon bill or cross bill, as the case required.

It is a well-settled rule of equity pleading and practice that when facts necessary to the complainant's success is alleged or stated in his bill and not controverted by the answer, it is taken as admitted, and if admitted to be true either expressly or by failing to deny it no further controversy can arise upon it, and the decree of the court thereon concludes the defendant.

The cause was submitted to the chancellor upon bill, answer, exhibits, and proofs, and a decree rendered thereon, confirming the award and decreeing its enforcement. This decree was on appeal affirmed by the Supreme Court. The very able and ingenious argument of complainant's counsel has failed to convince me that the validity of this lease was not a necessary element in the complainant's cause and was not sufficiently stated in her bill, and not being denied was admitted by defendant's answer. I can come to no other conclusion than that the question is now res judicata and concluded. Had I had any serious doubt on this question, I would have retained the injunction for the entire decree, or if I had such doubt now would reinstate it, as to
367 the entire decree. But admitting that the question of ultra vires was now an open one, I am by no means convinced that it can be maintained as to this lease.

The case of Perce *v.* Madison & Indiana R. R., 21 How., 442, is mainly relied upon by complainant's counsel to sustain this objection to the lease. That was a case in which a R. R. company purchased a steamboat to run between the terminus of its road and that of another road, which, by agreement of the officers of the two companies, were, without legal authority, consolidated and run together for a time. This was extending the line of transportation, and by a different mode from that provided by the charter, and therefore beyond its authority express or implied; had it been necessary to employ a steamboat to connect the line of transportation authorized by the charter, as in case of the New Orleans road from Manshac to N. O., caused by the breaking of the levees and consequent overflow of the road, I apprehend the want of authority in the company to employ or if necessary purchase a boat for the purpose could not successfully be interposed. The case of Besall v. Michigan S. R. R. Co., 22 N. Y., 258, and the way authorities therein cited, have been referred to by counsel to sustain this objection to the lease. These cases only go to establish the general doctrine that corporations can only exercise the powers expressly conferred or those necessarily implied to effect the purposes for which the corporation is created. This was not, as is assumed in argument, a contract for carry-
368 ing on a hotel or eating-house at the expense and for the benefit of the company, but was providing a place for the necessary accommodation of complainant's passengers and employees to be kept by others; this it was the duty of complainant to do: it is as much a necessity to provide at proper places, and to be kept in a proper manner, places where the passengers and employees in running the road can be supplied with something to eat, as it is to provide a building in which to store goods shipped or a room for the accommodation of passengers while waiting the arrival of trains. This is especially the case at the crossing of ex-

tended lines like the one where this building was erected; it was the duty of complainant not only to provide a place where their passengers and employees could get their accustomed meals, but where they could be lodged while waiting for the arrival of trains on the Mobile & Ohio road, and to secure this purpose it was necessary that the company should have sufficient control over the establishment to secure its proper construction, and that it should be properly kept and operated so as to convenience and accommodate those for whom it was required to provide, all of which was wisely stipulated in the lease, so that upon the failure of Scruggs, the lessee, to provide proper accommodations, complainant could, upon paying the cost of the improvements, displace him and put another in charge. I have been referred to no case in which this power has been denied, and I presume none can be found, or the industry and research of complainant's counsel would have found and produced it.

If the question of res judicata were out of the way it is, to say
369 the least, a very doubtful question whether the injunction should be retained on the question of ultra vires. Coming to the conclusion reached, I could not consistently reinstate the injunction for the whole amount of the decree, and were it a case in which an appeal does not lie, would not think of imposing any terms; but as an appeal is almost sure to be taken, and the Supreme Court may hold my conclusions erroneous, and if not no harm can result to Mrs. Scruggs from giving a refunding bond to cover such portion of the decree as she may see proper to collect of the amount for which the injunction is dissolved, and which I presume she will have no difficulty in doing, it may be my duty to require it, especially as the is amply secured.

Filed July 22, 1875.

G. R. HILL, *Clerk.*

Opinion of court on bill of interpleader & cross bill of Viser.

In the district court of the United States for the northern district of Mississippi, December term, 1876.

MEMPHIS & CHARLESTON R. R. Co.
vs.
NARCISSA SCRUGGS ET ALS.

This cause is now submitted upon the pleadings, exhibits, and proofs in the cause, so far as they relate to the claim to the funds under the control of the court set up by James H. Viser in his answer
370 to the bill of interpleader and his cross bill. The facts necessary to be stated to an understanding of the questions now presented are briefly as follows:

In 1857 the Memphis & Charleston R. R. Co. entered into a contract with J. W. Scruggs for the erection and operation of a hotel or eating house upon their grounds at the crossing of their road with the Mobile & Ohio R. R. at Corinth, by which Scruggs agreed to erect the necessary improvements, according to the plan and specifications furnished by the company, and to keep a good hotel and eating house for the accommodation of the passengers and employees of the company, and only to charge the usual fare to the employees, and to pay an annual ground rent of $250. The contract contained the further conditions, that should Scruggs not keep the house to the satisfaction of the company he should surrender possession to the company, upon payment of the value of the

property, or should Scruggs not be satisfied with the patronage afforded him by the stoppage of the trains, then he had the right to surrender possession and demand payment of the value of the property, and should the parties not be able to agree as to the value upon the happening of either of the events mentioned, the question should be submitted to arbitrators, one to be selected by each party, and they to select a third, whose award was to be conclusive upon the parties. Under this contract Scruggs erected the building, and continued to carry on the house until some time prior to the 11th May, 1869, when he transferred his interest in it to his wife, Narcissa. Being in need of money, Scruggs applied to Viser for the loan of $5,000, which he represented was for
371 the use of his wife to purchase necessary family supplies for herself & children, and with his wife executed to Viser their note for repayment of the amount loaned, which note recited the purpose to which the funds were to be appropriated, and also executed a deed of trust upon this leasehold interest in the hotel property to secure the payment of the sum loaned. Upon this being done the sum of $5,000 was loaned by Viser, this all being done on 11 May 1869. For this loan Viser was to receive interest at 20 per cent. per annum, payable by monthly instalments of $83 33⅓ each, and for which Scruggs & wife executed their obligations in writing, reciting that it was for money loaned to Mrs. Scruggs to purchase supplies for herself and family. The note given for the first year was paid, and on the 11 May, 1870, another note of like character was given for the ensuing twelve months. How much of this last note was paid does not appear.

On the 24 of February, 1871, the R. R. Co. and Mrs. Scruggs entered into a mutual agreement in writing, by which the premises were to be surrendered to the company upon the payment of the value of the property, according to the terms of the lease. The parties not agreeing as to the construction to be given to the lease or the amount to be paid, these questions were submitted to referees or arbitrators, according to the stipulation of the lease. Viser becoming satisfied that Mrs. Scruggs, acknowledgement of the deed of trust was defective, and did not bind her, on the 15th of April, 1871, procured a reacknowledgement and re-registration of the deed of trust, by which the same for the first time became binding upon Mrs. Scruggs.

372 On the 20th April, 1871, the arbitrators met at Corinth, to hear and determine the questions submitted to them, and on the following day made and filed their award in the office of the chancery clerk of Alcorn county, as required by the terms of submission. By this award the company was required to pay Mrs. Scruggs for said property the sum of $31,666$\frac{66}{100}$, with interest at 6 per cent. until paid, and that Mrs. Scruggs should retain a lien upon the property until the amount so awarded should be paid. When payment should be made of the sum awarded, with interest, Mrs. Scruggs should surrender possession of the property to the company.

Mrs. Scruggs filed her bill in the chancery court of Alcorn County to enforce this award, and obtained a decree in that court for its enforcement, which, upon appeal to the supreme court, was affirmed with damages. In 1872 Viser procured the trustee to advertise the property for sale under his trust deed, when Mrs. Scruggs filed her bill to enjoin said sale, and praying that the notes and trust deed might be declared void and cancelled. Viser filed his answer and cross-bill, denying the invalidity of the note and deed, and praying that the leasehold estate should be sold, and that so much of the proceeds as might be necessary should be applied to payment of the amount claimed to be due him. A decree

was made by the chancellor in accordance with the prayer of Mrs. Scruggs' bill, from which Viser appealed to the supreme court, which court, at April term, 1874, affirmed the decree of the chancellor so far as it applied the corpus of the estate, but reversed it as to the income, holding that the trust deed created an incumbrance upon the in-
373 come of the property for the payment of the sum so loaned, with legal interest, and directed that it be purged of all usurious interest. The cause upon the reversal was pending in the chancery court of Alcorn County when the bill of interpleader was filed in this court, and the parties enjoined from proceeding in that court, so far as it might affect the interest of the complainants in this suit.

Viser in the meantime instituted his action on the law side of the docket of this court by attachment, seeking to hold Mrs. Scruggs personally responsible for the sum so loaned, with interest, but which was dismissed except as to promises made after discoverture; this action was tried at the last term, resulting in a verdict in his favor for the sum of $1,382, which sum by the decree in this cause was paid over to Viser.

It is insisted by both the counsel for Mrs. Scruggs and the company that this decree is final, and excludes Viser from any further participation in the funds under the control of the court in this cause; and by Viser's counsel that that decree only was intended as a disposition of so much as was necessary to satisfy the judgment obtained in the attachment suit. I am of opinion that that decree was not final but only satisfied the judgment, leaving for future adjudication all other matters arising upon proceedings under Viser's cross bill. I am, however, of opinion that as no objection was then made to the payment of the residue of the money then in court to Mrs. Scruggs that Viser cannot hold the railroad company liable for the amount so paid over.

374 It is insisted upon the part of Mrs. Scruggs that the agreement made by the company and Mrs Scruggs on the 24th Feb'y, 1871, was a surrender of the leasehold interest to the company, and that when she reacknowledged the trust deed on the 15th April following she had no interest in the property which she could encumber. This is denied by Viser, which presents the main question now to be decided. A careful consideration of the question satisfies me that this agreement did not of itself surrender the lease or change the rights of the parties. It was the in'iatory step which led to that result, but the rights of the parties were not changed until the making and filing of the award on the 21st April, six days after the reacknowledgment and reregistration of the trust deed.

The trust deed recites that the interest which Mrs. Scruggs purported to convey was a leasehold interest. The lease was not recorded, but Viser, being informed of its character, was put upon inquiry as to its stipulations, and must be held to a knowledge of them. Mrs. Scruggs could convey no other interest than that which she held under the lease, which gave the company the right to terminate it if Scruggs or the holder of the lease failed to keep the house to the satisfaction of the company, upon the payment of the value of the property, as stipulated in the lease. That this agreement for a surrender of possession was mutually made can make no difference. Mrs. Scruggs only done what the company had a right to compel her to do.

Viser, in his cross bill, denies any knowledge of the agreement
375 of the 24 Feb'y, when he took a reacknowledgment of the trust deed on the 15th April, and Mrs. Scruggs does not by her answer deny the want of such knowledge, but Viser must be held to

a knowledge that the company had a right to demand it, and therefore he cannot be heard to object to it.

I am of opinion that, as between Viser and Mrs. Scruggs, the trust deed fixed an incumbrance upon the rents and profits of the property so long as they remained the property of Mrs. Scruggs; and the *and the* interest, after her rights were changed into a money demand, for the value of the property, the form only of her property rights were changed, the money being a substitute for the leasehold interest, and the interest thereon being substituted for the rents and profits. Viser having acquired his incumbrance upon the income before the change, had a right upon the change being made to apply to a court of equity to secure it to him either by requiring Mrs. Scruggs to give bond and security for the payment of the interest, or to place the fund at interest under the order of the court for the payment of the amount due him until it was paid and satisfied. The interest as it accrued was his security, and the only security he had. If Mrs. Scruggs has received any portion of this interest, then Viser has a right to require that it be refunded out of the corpus of the fund.

It has been insisted in argument that this court, as well as the Supreme Court, has decided that the possession under the lease was
376 surrendered on the 24 Feb'y, 1871, in the submission to arbitrament. A careful examination both of the opinion of the Supreme Court, and those heretofore made by me in this cause, will not sustain this position, but upon the contrary fixes the right of Mrs. Scruggs to the value of the property as found by the arbitrators, with interest at 6 per cent., with retention of possession as a lien upon the property as security for payment as taking effect upon the making and filing the award on the 21st April, 1871. Up to that time the rents and profits belonged to Mrs. Scruggs under her lease; after that time they belonged to the company, which Mrs. Scruggs was bound to apply to the payment of the award as between the company and herself; but this payment had no effect upon Viser's rights to the interest upon the whole sum awarded as a security for his debt so pledged by the trust deed.

It has been argued against the claim of Viser that the rents and profits received by Mrs. Scruggs must first be applied to the payment of the interest, thereby leaving no interest to Viser. The rule stated is correct as between Mrs. Scruggs and the company, but has no effect as between Viser and Mrs. Scruggs; for if she received the interest in the way of rents and profits, she received it as trustee for Viser, and must be held to account to him for it.

It is urged upon the part of the Memphis & Charleston R. Road Co. that in any event the company cannot be held liable to Viser beyond the balance that may be found due from the company upon taking
377 the account heretofore ordered. Whilst I am at present inclined to sustain this position, it will be reserved until the coming in of the report in that case, as well as upon the account to be taken between Viser and Mrs. Scruggs, as these accounts may or may not render any further consideration of this question necessary. The same reason makes it necessary to reserve the question as to the priority of the lien for counsel fees claimed by Sale & Dawd. A reference will be made to the master in chancery of this court to take proof and state an account, ascertaining the balance due Viser upon the loan so made by him, allowing him ten per cent. per annum interest until the first payment was made, then add the interest to the principal and deduct the payment, and so on with each payment that exceeds the interest, or until the payments exceed the interest, until the amount due shall be ascertained.

That in taking said account reference may be had to any testimony on file, or which either party may produce, and the master, if he finds it necessary, may examine either party as to such payments.

R. A. HILL, *Judge.*

Filed 23 Dec., 1876.

G. R. HILL, *Clerk.*

378 *Opinion of court on exceptions to master's reports.*

In the district court of the United States for the northern district of Mississippi. June term, 1877.

MEMPHIS & CHARLESTON R. R. Co.
v.
NARCISSA SCRUGGS ET ALS.

The questions now presented for decision arise upon the exceptions filed to the master's report of the accounts between complainant and Narcissa Scruggs, and that between J. H. Viser and Mrs. Scruggs. The first named will be first considered. The first exception, being withdrawn, will not be considered.

The second exception is as to the charge of $6,000 for the use and occupation of the hotel for one year from April 21st, 1871. It is strenuously argued by Mrs. Scruggs' counsel that Mrs. Scruggs, whilst entitled to possession, is not liable for use and occupation. I decided at the last term that as Mrs. Scruggs elected to take interest upon the amount of the award in her favor, she was chargeable for use and occupation; that the parties occupied a similar relation to each other that exists between mortgager and mortgagee. I am satisfied with this conclusion; the only question is as to the reasonableness of the amount charged for this year. Complainant has produced no testimony, and relies upon the testimony of Mrs. Scruggs, which would seem to
379 justify the charge. I am satisfied, however, that the estimate includes the use of the furniture, which was Mrs. Scruggs', and should not be included. I doubt whether the property could have been rented to a solvent lessee for so large a sum. It is true that at the end of the year it was leased to Chapman at $500 per month, but he soon failed.

It is also true that the large sum awarded was doubtless based upon the large estimates made of the rental value by the witnesses before the arbitrators, but that cannot be considered in this estimate. A reasonable sum for rent or use and occupation is all that can be charged; and looking to the rent afterwards received by those who paid and were able to carry on the business, I am satisfied that $4,500.00 is as much as the property could have been rented for to a solvent and paying tenant. This item will therefore be reduced to this sum.

The 3d exception is as to the charge for occupation, rent from August 1st to Dec. 1st, 1872, 4 mo., at $300 per month. This exception is based upon the position that Mrs. Scruggs is not liable for rent, which position has already been held not maintainable. The next lessee paid this sum, and there is no proof that the property was not occupied as usual; and this exception must be overruled.

The 4th exception alleges that the charge of $3,600 paid by T. P. Young was erroneous in this, that it was paid not to Mrs. Scruggs but to a receiver under the orders of the chancery court of Alcorn County, in the suit of Viser vs. Mrs. Scruggs. I after mature consideration at

the last [term] held that Viser's trust-deed upon the making and
380 filing the award attached to the interest upon the sum awarded as the income of the property, or interest in the hotel property conveyed. This being so, this sum if secured by Viser went to discharge an obligation for the payment of which Mrs. Scruggs had conveyed the income of the hotel, which by her act was changed into the sum awarded and the income on that sum, so that Mrs. Scruggs has received the benefit of this payment. This exception must therefore be overruled.

The 5th exception is that the credits allowed complainants are all barred by the statute of limitations. This exception cannot be maintained, indeed has not been seriously insisted upon.

6 exception insists that all the credits allowed by the master have been adjudicated by the courts of the State, and that this court is without jurisdiction. This exception has not been urged by counsel, and is not maintainable. The 7th exception sets up the coverture of Mrs. Scruggs as a defence to the credits allowed for the use and occupation of the property during 1871 & '2; this exception is not well taken & must be overruled.

The 8 exception alleges that the clerk & master erred in not allowing Mrs. Scruggs a [credit] for $2,000.00, which it is alleged was paid by Matthews, as agent for Mrs. Scruggs, for taxes, as stated in the pr. of of Matthews. It is true that Matthews states that he did pay for that purpose in round numbers said sum. He has failed to show any receipts for taxes paid, although called upon to do so, nor has he given any excuse for not doing so. And besides, the proof, negatively at least,
381 shows that he paid none. This credit cannot be allowed, so that this exception is overruled.

This disposes of all of Mrs. Scruggs' exceptions, except a general one, which need not be considered, as all of the questions urged in argument under it have heretofore been considered and settled by me, and, notwithstanding the able and zealous arguments made against the conclusions reached, I see no reason for changing the principles then settled, with the exception of the amount of the credit given for use and occupation, commencing April 21st, 1871. Mrs. Scruggs' exceptions to the master's report must be overruled.

It is insisted by complainants that the balance of the rent notes given by Chapman, not credited, should be credited, which question is submitted by the master. There is no proof that Mrs. Scruggs has collected or received credit for this sum, and without which I do not think this credit should be allowed.

It is further insisted that the balance of $475.87 for ground rent due from J. W. Scruggs, as shown by the master's report, should be allowed as a credit. I am of opinion that this is a mere matter of account between the parties to it, which cannot be taken into this account.

The sum of $1,500.00 disallowed, with interest to the time of taking the account—1st, this month—at 6 per cent., is $1,959.75, which, deducted from the sum of $2,139.49, the balance found due complainant by the master's report, leaves the balance due $179.74.

382 This brings us to consider the exceptions filed to the account between Viser and Mrs. Scruggs, as reported by the master.

The first of which is withdrawn and the second not insisted upon and not maintainable.

The 3d exception charges as error the disallowance of certain payments stated by Matthews in his testimony as having been made by him. Matthews shows no vouchers of for these payments; indeed, I find no

testimony of Matthews on this point. Viser denies having received any payments except those stated in his deposition; the burthen of proof is upon Mrs. Scruggs. I am satisfied that the master did not err in giving other credits for payments received by Viser than those stated; therefore this exception must be overruled.

The 4 exception is that Mrs. Scruggs' attorney had a lien upon the fund prior to that of Viser, the reply to which is that the attorneys have received, in cash, of this fund, more than twenty thousand dollars, and if they neglected to retain their fees, cannot now claim them to the prejudice of Viser. There is no fund now in court out of which to pay either the solicitors or Viser, so that this exception cannot be maintained.

The 5 exception is that Viser's remedy, if any, is at law, and not in equity; we have already [stated] that this exception is not maintainable.

The 6 exception is that the separate property of Mrs. Scruggs cannot at the same time belong to complainant and Viser, or the corpus of her estate be taken to pay her husband's debts.

383 To this the answer is that no such claim is made. Complainant sets up no claim to the income, and Viser is not now contending for anything but the income, which is the interest on the amount of the award, and is more than sufficient to pay off his demand. This Mrs. Scruggs has received; it is no difference whether she received it in the use and occupancy of the property or rents received therefrom or in cash directly from complainant; she is now a feme sole, and responsible personally for that which she has received since discoverture. In other words, the corpus of her estate is bound for it, and to require its application to the payment of the amount due Viser does not vitiate any rule of law or equity known to me, or presented by the learned solicitor of Mrs. Scruggs, whose learning in the law and untiring research would have disclosed it if any existed. I am satisfied that this exception is not well taken.

The 8 and last exception is that the decree had at the last term of the court on the bill of interpleader concludes Viser from any further relief. This decree only directed the payment, out of the funds then in court, of the judgment at law obtained by Viser upon the promises made by Mrs. Scruggs after discoverture. The decree reserved all other questions. The judgment thus paid, whilst a proper credit upon the claim of Viser under his trust deed, had no other effect, being predicated upon a separate and independent promise.

The result is that all the exceptions taken by Mrs. Scruggs must be overruled.

384 This brings us to the consideration of the exceptions filed by Viser to this account, and that is, that the payment of $1,000 on the note given for the first year's interest was scaled down to ten per cent. interest. This action of the master was proper. All that Viser is entitled to is his money advanced, with ten per cent. interest; all over that recovered or received being usurious. This exception must be overruled. Viser claims that he should be allowed all the costs and expenses incurred in prosecuting and defending suits in the recovery of his demand. I am satisfied this can only be allowed so far as the same have arisen as fees in the suits to be taxed as costs properly in the different suits.

The costs in the suit in the chancery court of Alcorn County must be disposed of by that court, that cause not having been transferred to this court. The costs incurred in the attachment suit, if not already paid out of the funds that was paid into court, will be taxed to Mrs. Scruggs

and paid out of the amount to be refunded by her; so will the costs in the proceedings in the cause, so far as this relates to the costs incurred upon the bill of interpleader and cross-bill of Viser.

The costs, so far as not adjudicated, which have accrued between complainant and Mrs. Scruggs, will be divided between them, each party having in part succeeded and in part failed.

Complainant having paid either into court or to Mrs. Scruggs' solicitor all that is found due, there remains no further liability other than for cost. But the refunding bond executed by Mrs. Scruggs, al-
385 though payable to complainant, was intended to secure the refunding of whatever sum might be necessary to meet the demands of any decree which the court might make upon final hearing; a decree will be made requiring her to pay into court such sum as may be necessary to pay and satisfy the balance due complainants and the balance due Viser, and costs. A reasonable time must be given for the payment of this sum; and in default of payment, execution awarded against the obligors in the refunding bond.

Filed June 13th, 1877.

G. R. HILL, *Clerk.*

UNITED STATES OF AMERICA,
Northern District of Miss., ss:

I, George R. Hill, clerk of the district court of the United States for the northern district of Mississippi, hereby certify that the foregoing thirty pages contain a true and perfect manuscript of the several within opinions of this court delivered in said cause, as fully and completely as appears from the originals now remaining on file in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court at my office in Oxford, Miss., on this the day of , 1879.

[SEAL.]

G. R. HILL, *Clerk.*
By S. C. LANE, *D. C.*

(Indorsement on cover:) No. 1010. Narcissa Scruggs and E. R. & James Matthews, sureties, appellants, v. The Memphis and Charleston Railroad Company and James H. Viser. N. Mississippi D. C. U. S. Filed 21st October, 1879.

108-368

OFFICE SUPREME COURT U. S.
FILED
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Supreme Court of the United States.

No._____

NARCISSA SCRUGGS AND E. R. MATTHEWS AND JAMES MATTHEWS, SURETIES, APPELLANTS,

VS.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY, AND JAMES H. VISER.

BRIEF FOR COMPLAINANTS.

H. P. BRANHAM, - - - - - SOLICITOR.

Supreme Court of the United States.

No._____

NARCISSA SCRUGGS AND E. R. MATTHEWS AND JAMES MATTHEWS, SURETIES, APPELLANTS,

VS.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY, AND JAMES H. VISER.

BRIEF FOR COMPLAINANTS.

STATEMENT OF THE CASE.

On the 7th day of July, 1857, John W. Scruggs, now deceased, husband of appellant, Narcissa Scruggs, entered into a written contract with the Memphis & Charleston Railroad Company, whereby it was agreed that he shouln build, with his own means, a hotel at Corinth, Miss., upod land belonging to the Railroad Company; pay to the Company an annual rent of $250.00 for the use of the ground; keep a first-rate eating-house there, and board all officers and employees of the Company at the usual rates of other houses along the line of said railroad. Should the Company, at any time, become dissatisfied with the character of the hotel, it retained the right of taking possession of it by paying Scruggs its value; and if Scruggs became dissatisfied with the schedules or management of the Company, he had the right, under the contract, to surrender

the improvements put on the land and require the Company to pay their value at the time of such surrender; in either case the property was to be valued by disinterested persons. This arrangement was to be binding only so long as mutually agreeable. The improvements were to be erected according to the plan of specification of the general superintendent of the Memphis & Charleston Railroad Company, and to his satisfaction. (For copy of contract, see Record, p. 24.).

Scruggs erected the improvements as agreed, and occupied the hotel under the contract, keeping the eating-house and boarding the officers and employees of the Company until February 24th, 1871, when he and Narcissa Scruggs and M. J. Wicks, then President of the Company, agreed to a termination of the lease, and on that day entered into a written submission of the matters to arbitrators. This submission, after setting forth the contract above mentioned, provided that: "Whereas, said J. W. Scruggs has conveyed by deed his interest in said property to said Narcissa Scruggs; and, whereas, according to the provisions of said contract, it has become agreeable to both parties that said property shall be surrendered to the said party of the first part," (meaning the Railroad Company,) "and the payment of the amount due them for the value of said property under said agreement; and, whereas, said parties differ as to the construction of said agreement and the amount due the parties of the second part for the value of said property: It is, therefore, agreed that the construction of said agreement, and the amount of the value of said property to be paid on its surrender, is hereby submitted to the arbitrament and award of Robert C. Brickell, Reuben O. Reynolds and F. L. Pledge, who shall meet at Corinth, Mississippi, on the day to be specified by them; reasonable notice to be given to the parties and their counsel, with the privilege of introducing all legal evidence. They shall settle the construction of said contract and fix the amount that is justly due by the party of the first part to the parties of the second part for the value of said property; and on the payment of said sum so fixed, the parties of the second part shall surrender said property to the parties of the first part, and the amount so fixed shall be a lien on said property. * * * * * It is further agreed that on the payment of the amount so awarded, and the surrender of the property, the parties of the second part shall execute and deliver to

the parties of the first part, a quit-claim, and conveying all their interest in said property."

This submission was signed by the Memphis & Charleston Railroad Company, by its President, M. J. Wicks, and also by Mrs. Narcissa Scruggs and Jno. W. Scruggs. (See Record, pp. 24–26.)

In accordance with said agreement of submission, the three arbitrators named, met in Corinth on the 20th of April, 1871, and after hearing all the evidence and arguments of counsel on both sides, they made, on April 21st, 1871, their award, the first clause of which is as follows:

"And we, the undersigned arbitrators, after hearing the argument of counsel and all of the evidence, and being fully satisfied, do order, adjudge and decree that the Memphis & Charleston Railroad shall pay to said Narcissa Scruggs the sum of thirty-one thousand, six hundred and sixty-six dollars and sixty-six cents, in full payment of all the improvements placed on the ground occupied by the Scruggs House on the grounds of said Company, at Corinth, Mississippi; and on the payment of said sum of money, the said Narcissa Scruggs shall deliver possession of said hotel to said Railroad Company." (See Record, p. 38.)

The agreement of submission also provided that the decree of the arbitrators was intended as a decree of the Chancery Court of Alcorn county, Mississippi, and that all the testimony should be entered as a part of the record of said Chancery Court, according to the provisions of the statue of Mississippi. This, by the award, was ordered to be done.

As soon as this award was rendered, Mrs. Scruggs offered to surrender the property to the Company, and to execute the quit-claim mentioned in the agreement of submission, and demanded payment of amount fixed by the award. This payment the Company refused to make, and Mrs. Scruggs, therefore, retained possession of the property until the Company should comply with the requirements of the award.

Upon the refusal of the Company to pay the amount fixed by the arbitrators and take possession of the property, Mrs. Scruggs commenced proceedings to enforce the award, and upon the 2d day of May, 1871—only twelve days after the award was made—filed her bill for this purpose in the Chancery Court of Alcorn county. In this bill she again offered to surrender the property, and on No-

vember 24th, 1871, she filed in this suit a duly executed quit-claim deed to said property to be delivered to said Company upon its compliance with the award. This suit was strongly resisted by the Company upon many grounds, but on the 8th of January, 1872, the Chancellor rendered a decree in favor of Mrs. Scruggs, sustaining the award, and among other things, ordered that the Company should, within thirty days from the date of the decree, pay to Mrs. Scruggs the sum of thirty-one thousand, six hundred and sixty-six dollars and sixty-six cents, with interest from April 21st, 1871, and that "*on payment of said sum of money*, she should surrender possession of said property to the Company, and deliver to it a quit-claim deed thereto." This decree provided for a sale of the property in the event the money was not paid in the thirty days allowed, and for this purpose the Company was divested of all right, title and interest in and to the property, and the same vested in a Commissioner. (Record, pp. 48–50.)

The Company appealed from this decree to the Supreme Court of Mississippi, and there the suit was protracted till December 14th, 1874, when the Supreme Court affirmed the decree of the Court below, and rendered judgment against the Company and against R. W. Price, John M. Nelson, Alex. R. Wiggs and D. E. Coleman, sureties on the appeal bond, for the amount of the decree and the additional sum of $1,583.33, statutory damages.

During this period of over three years spent in endeavoring to enforce the award, the property remained in the possession of Mrs. Scruggs, and for a part of the time was rented out and the rents collected and appropriated by her.

On the 8th January, 1875, the Company filed its bill in the Chancery Court of Alcorn county, against Mrs. Scruggs and the above named sureties on its appeal bond, claiming that inasmuch as the property had been in the possession of Mrs. Scruggs since the rendition of the award, the Company was entitled to recover from her its full rental value from April 21st, 1871, and also ground rent due from her and from Jno. W. Scruggs. An injunction was prayed for and obtained, restraining the execution of the mandate of the Supreme Court until the amounts of this rental value and the ground rents should be ascertained and credited on the amount of the decree. To this bill Mrs. Scruggs filed her answer setting forth the facts substantially as above, when, upon the petition of the Company, the case was removed to the District Court of the United States.

On the 5th day of July, 1875, Mrs. Scruggs, by her counsel, entered two motions in the cause: 1st. To remand the case to the Chancery Court of Alcorn county, Mississippi; and 2d. To dissolve the injunction restraining the execution of the mandate of the Supreme Court of Mississippi.

The motion to remand the cause to the State Court was overruled; but inasmuch as the claim of the Company for rents did not cover the entire amount of the judgment, the Court modified the injunction so as to retain it as to $20,000, and dissolve it as to the residue, which residue the Company was ordered to pay to Mrs. Scruggs, or to her solicitors of record, in twenty days from the date of the order, and in default of such payment, the Clerk of the District Court was ordered to issue execution as at law against the Railroad Company, and its above named sureties on its appeal bond. Afterwards, upon motion of the Company, the property in Corinth was placed in the hands of a receiver, and upon motion to reinstate the injunction, as to the whole amount of the judgment, the Court required Mrs. Scruggs to execute and file a refunding bond in the sum of ten thousand dollars, conditioned that she would pay, as the Court should hereafter direct, any money collected by her. This bond was given by her with appellants E. R. Matthews and James P. Matthews as her sureties.

At this stage of the proceedings an entirely new element, constituting a separate and distinct case, was injected into the suit. On the 11th day of May, 1869, Mr. James H. Viser loaned to John W. Scruggs the sum of five thousand dollars, for the payment of which, with twenty per cent. per annum interest, John W. Scruggs, and his wife Narcissa, executed their joint notes, and to secure this payment also executed a mortgage, in the form of a trust deed, upon the hotel at Corinth, fixtures, furniture, etc., this being the same property involved in this suit, and which, at the time the money was loaned was the separate property of Mrs. Narcissa Scruggs, a married woman.

On September 24th, 1875, the Railroad Company filed its amended bill and bill of interpleader against Narcissa Scruggs, James H. Viser, and Wm. F. Dowd, attorney for Mrs. Scruggs, in which it stated that it had been garnisheed by Mr. Viser, in an attachment suit, to reach whatever might be due her from said Railroad Company upon a final settlement between them; that it had been notified by W. F. Dowd, that he held a lien upon what was due Mrs.

Scruggs, under the decree of the Court for professional services rendered in the State Courts and in this Court; and had also been notified by Mrs. Scruggs not to pay to W. F. Dowd any money belonging to her; that the United States marshal held an execution issued by order of this Court against the Company for the excess over $20,000 due on the decree. That it had therefore paid to the marshal the sum ordered to be paid, and as to which the injunction had been dissolved, and prayed that Mrs. Scruggs, Viser and Dowd should be required to interplead and settle between themselves their claims to the money, and that Jas. H. Viser be enjoined from further prosecuting his attachment suit against the Company. The injunction prayed for was granted, and Mrs. Scruggs, Col. Dowd and Mr. Viser, each separately answered the bill. The answer of Col. Dowd denies that any controversy existed between him and Mrs. Scruggs, and states that the full amount paid to the marshal on the execution had been paid by the marshal to him, and that after deducting a portion of his fees he had paid the balance to Mrs. Scruggs, and that both he and his client were fully satisfied in regard to the arrangement of fees. With this answer the relation of Col. Dowd, as a party to the suit, terminated. The answer of Mrs. Scruggs corroborated the statements of Col. Dowd, and denies that any controversy existed between her and her solicitor. It further states that the claim of Mr. Viser was based upon a note given for money loaned by him to John W. Scruggs, and which she had signed as surety for her husband; that at the time the money was loaned and the note executed she was a *feme covert*, and that no liability existed on her personally, nor was her property, either in the hands of the Court or the Memphis and Charleston Railroad Company, liable for the debt, and that it could not be subjected to its payment. Mr. Viser's answer simply sets up his claim against Mrs. Scruggs for $5,029 46 as due by note and secured by deed of trust upon the "Scruggs House," fixtures, furniture, etc., at Corinth. He also filed a cross-bill against the Memphis and Charleston Railroad Company and Mrs. Scruggs, in which he seeks to fasten his claim upon the amount due under the decree, upon the ground that a portion thereof was the income of Mrs. Scruggs' estate and was therefore liable for the payment of his debt. The answer of Mrs. Scruggs to this cross-bill again denies that either she or her property is liable for Mr. Viser's debt. The answer of

the Railroad Company disclaims all knowledge of the merits of the controversy between Viser and Mrs. Scruggs, but denies that the rents and profits of the hotel at Corinth, while in Mrs. Scruggs' possession, were liable to Mr. Viser, and claims that they belonged to the Company, and should be credited upon the amount of the decree.

The cause came on for hearing on the 24th December, 1875, when the Court decreed that the Company was entitled to have credited upon the amount of the award and decree the reasonable rents received by Mrs. Scruggs, or that she might have received by prudent management, or for any period she occupied the hotel and property at Corinth, from May 11th, 1871, until the property was taken charge of by the receiver under order of the Court. The cause was referred to the clerk and master to take and state an account between the Company and Mrs. Scruggs. On the 25th of December, 1875, the Court also ordered the clerk to pay to Mr. Viser the sum of $1,382 05 out of $2,500 belonging to Mrs. Scruggs, and then in the hands of the Court.

On the 4th of April, 1876, the Court, upon petition and motion of the Company, discharged the receiver and placed the hotel and property at Corinth in the possession of the Company; and on December 18th, 1876, an order was made referring to the clerk and master the cause between Mr. Viser and Mrs. Scruggs, with instructions to make and state an account between them, and report the same by the 22d of that month. The first report of the master of the account between Mrs. Scruggs and Mr. Viser was set aside on motion, and the matter again referred to him. On May 18th, 1877, he filed reports stating accounts between both Mrs. Scruggs and the Company, and Mrs. Scruggs and Mr. Viser. (Record pp. 108–115.) These reports gave to the Railroad Company credits for rent of the property, to the amount of $17,188 55, and $750 for ground rent during the time the property was in her possession; and also showed a balance in favor of Mr. Viser, exclusive of the $1,382 05 already paid him, of $3,807 27 against Mrs. Scruggs.

After various exceptions to these reports, the Court, on the 9th day of July, 1877, rendered the final decree in the case. By this decree the credits for rent of the property were reduced to $15,688 55, the credit for ground rent was disallowed, the reports of the master, thus modified, were affirmed, and judgments rendered against Mrs. Narcissa

Scruggs and E. R. Matthews and James Matthews, sureties on her refunding bond, for $179 00 in favor of the Memphis and Charleston Railroad Company, and for $3,807 27 in favor of James H. Viser. (Record 117–118.)

ASSIGNMENT OF ERRORS.

Appellants assign the following as error in this cause:

1st. The Court erred in allowing the Memphis and Charleston Railroad Company credits upon the amount of the award of the arbitrators and decrees of the State Courts, for rent of the hotel and improvements during the period of litigation between the parties.

2d. The Court erred in appropriating money belonging to Mrs. Scruggs to the payment of the debt of James H. Viser, and in giving judgment against her in his favor upon her refunding bond.

3d. The Court erred in giving judgment against James Matthews and Elliott R. Matthews in favor of James H. Viser.

ARGUMENT.

1st. The court erred in deducting from the amount of the award and decree the sum of $15,688.55 and allowing it to be retained by the Memphis & Charleston Railroad Company as a credit for rent of the property during the period of litigation.

From the very beginning of the transactions which led to this suit until it was removed to the United States Court, no feature is more prominent nor more clearly expressed than that it was the intention of the parties, the purpose of the arbitrators and the judgment of the courts that Mrs. Scruggs was to retain possession of the property until the value of the improvements was paid by the Company. Until this money was paid she was the *owner*, not the *tenant* of the improvements. The improvements had been erected with the money of her husband under a written contract; had been conveyed to her by deed from him, and her title to them could only be defeated by the payment of their value, and only upon this payment were they to be surrendered. That when, in accordance with the original contract, the matter had been fairly submitted to arbitrators, and their award rendered, the Company, by a violation both of the contract and the agreement of

submission, could refuse to comply with the terms of the award, force her into a protracted and expensive litigation by its failure to pay to her the money adjudged to be due her, and which was to be paid before the property was to be surrendered, or at least simultaneously with it, and yet at the same time assert its ownership of the improvements and collect from her rents for them, was never intended by the parties, arbitrators nor courts.

In the original contract between the Company and Jno. W. Scruggs, (Record, p. 24) for the erection of the hotel, is the following clause: "And if said Railroad Company should become dissatisfied with the character of the house kept, they retain the right to *pay said party the value of his improvements at the time, and take possession of the property;* and in case said party becomes dissatisfied with the schedule of the road or its management, that he has the right to give up said improvements, and require said Company to pay him their value at the time of such surrender." The italics in this and subsequent clauses quoted, are mine. It is manifest that the only way the Company could get possession of or title to this property was by payment of its value. It is also clear that the title to the improvements was in Mr. Scruggs. The contract calls them "*his* improvements." The agreement of submission to arbitrators was the result of a mutual desire to terminate the arrangment; and here again we find the same intention and understanding relative to the title and possession of the property. This agreement, after incorporating in full the original contract, and after naming the arbitrators selected, provides: "They shall settle the construction of the said contract and fix the amount that is justly due by the party of the first part to the parties of the second part for the value of said property, *and on the payment of said sum so fixed, the parties of the second part shall surrender said property,*" etc., (Record, p. 25.) And in order to take the title out of Mrs. Scruggs and vest it in the Company, the agreement also requires her "*on the payment of the amount so awarded,*" and the surrender of the property, to make a quit-claim deed thereto to the Company. I submit, however, that the right of Mrs. Scruggs to retain possession of the hotel until the money for it was paid, was not a question open for the decision of the District Court. It was *res adjudicata* both by the arbitrators and the State Courts. If she had the right to hold it at all, she had the right to hold it free of rent.

The Railroad Company could not have been entitled to rent for property it never possessed, and expressly refused to possess. The award of the arbitrators, to whom both the construction of the contract and the value of the property was submitted, provides: "That the Memphis & Charleston Railroad shall pay to said Narcissa Scruggs the sum of thirty-one thousand, six hundred and sixty-six dollars and sixty-six cents, in full payment of all the improvements placed on the ground occupied by the Scruggs House on the grounds of said Company, at Corinth, Mississippi; *and on the payment of said sum of money the said Narcissa Scruggs shall deliver possession of said hotel to said railroad company.*" (See Record, p. 38.) This award is decisive of the rights of the parties under the contract, and in it Mrs. Scruggs' right to the possession of the property till the money was paid is clearly expressed. She was only to surrender possession on payment of the amount fixed. If she was entitled to possession by virtue of this award, she was not the tenant of the Company and cannot be charged with rents.

But the Company was not satisfied with the award of the arbitrators and refused to comply with its terms. The matter was, therefore, carried to the Chancery Court of Alcorn county and there adjudicated. This court, in its final decree, affirms the award of the arbitrators and continues as follows: "It is, therefore, ordered, adjudged and decreed that said Memphis & Charleston Railroad Company, the defendants in this case, shall, within thirty days from the date of this decreee, pay to said complainant, Narcissa Scruggs, the sum of thirty-one thousand, six hundred and sixty-six dollars and sixty-six cents, with interest from the 21st day of April, 1871, and that *on payment of said sum of money, she shall surrender possession of said property* to said Memphis & Charleston Railroad Company, and deliver to them a quit-claim deed surrendering and conveying all her right, title, claim and interest." This decree was rendered on the 8th day of January, 1872, nearly nine months after the award of the arbitrators. Mrs. Scruggs was still in possession of the property, and her right to its possession is not only recognized by the court, but the decree expressly authorized her to retain it till the money is paid. She is only to surrender when she receives its value from the Company. There is no intimation that the title to it was in the Company before it was paid for, that Mrs. Scruggs was its ten-

ant, liable for rents; but, on the contrary, it is expressly decreed that she shall be paid the full amount of the award, with interest, before the Company shall have possession. (Record, p. 48.) Not content with this decree, the Company appealed the case to the Supreme Court of the State. Here a decision was not reached till December 14th, 1874, nearly three years and eight months after the award was rendered. The Supreme Court affirmed, in full, the decree of the Chancery Court, and rendered judgment for the full amount of the decree of that Court with interest and statutory damages to the amount of $1,583.33. (Record, p. 54.) The case will be found reported in full in 50th Miss. Reports, pp. 284–300. It is here decided that the rights of the parties were finally settled by the award of the arbitrators, and the questions submitted to them were *res adjudicata*. That one of the questions submitted to the arbitrators was the construction of the contract; that they had found that Jno. W. Scruggs had acquired a perpetual lease of the ground occupied by the hotel upon payment of an annual rent of $250.00, and that this lease could not be terminated at the will of the Company, but only by his failure to keep a first-rate eating-house there. While the court regarded this award as final, and not to be disturbed, the opinion of the court is that the conclusion reached by the arbitrators was correct. I submit that the decision of the arbitrators that Mrs. Scruggs was entitled to the possession of the property, under the contract, till the value of the improvements was paid, was clearly within their powers under the agreement of submission; was a part of the construction of the contract; is plainly expressed in the award; repeated and affirmed by the Chancery Court of Alcorn county; again affirmed by the Supreme Court of Mississippi; was *res adjudicata;* and that the District Court could not properly, in the face of these decisions, decide that all during the period of this litigation, she was but the tenant of the Railroad Company, and liable to it for rents. I also submit, that this construction of the arbitrators and State Courts was correct, and simply carried out the intention of the parties clearly expressed both in the contract and agreement of submission. The claim for rents was but an after-thought, and the only means of delay left to the Company. All others had been exhausted in the nearly four years of litigation preceding the claim. Driven from every other position it fell back upon this as a last resort; and, I doubt

not, with success equally as surprising to the Company as to Mrs. Scruggs.

As soon as the award was made known Mrs. Scruggs offered to surrender the property and make the deed required, and demanded payment of the money due her. Twelve days afterwards, when she filed her bill in the Chancery Court of Alcorn county, she again offered to surrender possession of the property upon the payment of its value, and filed with the papers in the case a duly executed deed to be delivered to the Company upon its compliance with the award. There was never a day from the 21st of April, 1871, the date of the award, to the 9th of July, 1877, the date of the final decree in this case, when the Company could not have gotten possession of the property by paying its value. The advantage it has gained has been the result of a flagrant refusal to carry out an award sustained by both the Chancery and Supreme Courts of Mississippi, and, professedly, by the District Court of the United States. By this refusal it has made several thousand dollars by simply allowing the property, built with other people's money, for which the Company had never paid one cent, to virtually pay, in part, for itself, and assist in taking the title and possession from those who built and owned it, and passing it to a Company that, up to the time of its removal to the District Court, had never paid anything, and had never done anything except to refuse to do that which the law required it to do, and which the State Courts endeavored, and the United States Court professed to make it do. By its refusal to comply with, and determined resistance to the award of the arbitrators and decrees of the State Courts, the United States Court permitted it to make nearly $8,000 00, being the excess of rents allowed over all the interest and the damages awarded by the Supreme Court of the State. Including all the payments ever made in any way, interest, damages and all, $24,053 23 is the entire amount of money paid by the Company for property, the cash value of which was fairly adjudged by the arbitrators and Courts, both State and Federal, to be $31,666 66—a clear gain of $7,613 43. Aside from the technical question of title, I cannot believe a decree to be just or legal, which allows the Company, by its own refusal to pay for the property and take it, by its persistent refusal to carry out the terms of the award and obey the decrees of the Courts, to finally get the entire property for $7,613 43 less than it was required

to pay as its actual cash value. However much it may be twisted or turned or figured at $2,325 75 paid on Mrs. Scrugg's draft to Donegan, $19,217 63 paid by order of the Court when the injunction was modified, and $2,510 85 paid "on interpleader," September, 22d, 1875, was all the money ever paid by the Company in any way. These payments aggregate the sum of $24,053 23, or just $7,613 43 less than the value of the property exclusive of all interest and damages.

I know that counsel for appellees will reply to this, that inasmuch as Mrs. Scruggs, in one way or another, got the full amount of the award with legal interest, she cannot complain. My answer to this is, first, that she did not realize this sum, and secondly, that even if she had done so, it was not all to which she was entitled. By the Company's unjust refusal to carry out the award, Mrs. Scruggs has been put to heavy expense in order to enforce its performance. Over eleven years have elapsed, and the matter is still in litigation. The case has been through the Chancery Court of Alcorn county, through the Supreme Court of Mississippi, back into the Chancery Court, through the District Court of the United States, and is now pending in the United States Supreme Court. She has had her counsel to pay, and been mulcted in costs. How much she has paid her attorneys, the Court does not know; but if there is anything within the judicial knowledge of a Court it is that lawyers do not work for nothing in such cases as this, and that protracted litigation is an expensive luxury even to the winning party. That she has paid attorney's fees is shown by Col. Dowd's sworn answer that a part of the money paid him for his client was appropriated by him in payment of his services as her attorney in the case. She has been subjected to expense unjustly, and with no imputation of wrong on her part, and while she was at all times offering and seeking to carry out the award and decrees of the courts. She has not realized the value of her property, and has a just right to complain. But even had she realized the award and interest, was she not entitled to more?

During the many years of litigation, the property was in existence, and some one was entitled to its possession and income. The Company could have had it at any time by paying its value and taking possession. This it refused to do. By the terms of the award, Mrs. Scruggs was not to surrender it till the money was paid. The same

condition to its surrender was embodied in the decree of the Chancery Court in express words, and with the balance of this decree, affiirmed by the Supreme Court of the State. She was not required to surrender it to the Company, she was the only other person who had any claims upon it or interest in it; there was no obligation resting upon her to move out of it, or allow it to remain idle and go to ruin. She had by her contract a right to own it and to hold it till the money was paid; she had the right to live in it or to rent it, and the income of it, if any accrued, was hers both by law and justice until the Company saw proper to pay for it and take it. Yet, the District Court not only compelled her to pay to the Company all the rents received by her from others, but also made her pay the enormous sum of $6,900 00 for the time she occupied the house.

I might also answer, that by its delay and refusal to comply with the award, the Company made, notwithstanding the accumulation of interest and damages, $7,613 43, by paying for the property that much less than its cash value at the date of the award when it ought to have paid for it. Somebody must have lost that amount, for the Company to gain it. Mrs. Scruggs was the only other party to the transaction,

I respectfully submit, therefore, that in its judgment of the matters in dispute between Mrs. Scruggs and the Memphis and Charleston Railroad Company, the Court erred, and that upon this ground its judgment should be reversed.

2d. The Court erred in appropriating money belonging to Mrs. Scruggs to the payment of the debt of James H. Viser, and in rendering judgment against her in his favor upon her refunding bond.

Under the laws of Mississippi in 1869 the man who lent money to a married woman, or to her husband on the faith of her surety, did so at his peril. Mr. Viser knew this. Not only is he presumed to have known it, but in his testimony in this case, (Record, p. 146,) he says that the loan was made with direct reference to the laws of Mississippi. He sought to offset the risk he ran by charging usurious interest to the amount of double that allowed by law. In order, also, to hedge in his chances as much as possible, he took two separate notes, one for $5000 00, the amount loaned, and one for $1000 00, payable in monthly installments, to cover the first year's interest. (Record p. 89.) Both of these notes recited that they were given for money "loaned to Narcissa Scruggs for the purpose of purchasing

family supplies and necessaries for herself and her children," but this recital in one was worth no more than in the other, and it was admitted by Mr. Viser that the recital in the $1,000 00 note was not true, as it was given solely for the usurious interest to accrue on the other. The interest note was paid, and in 1870, one year from the date of the loan, another note for $1,000 00 was executed to cover a second year's interest, yet to accrue, at the same rate. This last named note bore also upon its face the same false recital.

It is evident from these precautions, and unnecessary and untrue recitals, that Mr. Viser was well aware of the perilous nature of the transaction, but preferred thus to hazard his money with the chance of illegal gain, to investing it in some more secure but less profitable manner.

The result of the transaction was a suit in the Chancery Court of Alcorn county—Mrs. Scruggs seeking to have cancelled the trust-deed executed by her, and Mr. Viser to subject the property embraced in it to the payment of his debt. This suit was instituted about December, 1872, after the award of the arbitrators, after the decree of the Chancery Court of Alcorn county affirming the award, and while the case between the Railroad Company and Mr. Scruggs was pending in the State Supreme Court. (See Viser's Cross-bill, Record, p. 85.)

The Chancellor decided the cause in favor of Mrs. Scruggs and decreed a cancellation of the notes and trust-deed. From this decree Mr. Viser appealed to the Supreme Court of the State; and here the entire transaction was considered in detail, decided at length, and is fully set forth in the opinion of the Court, in the case of James H. Viser, vs. Narcissa Scruggs, 49th Miss. Reports, p. 705.

It was there contended by Mr. Viser that the money was loaned to Mrs. Scruggs and not to her husband. Mrs. Scruggs, on the other hand, contended that it was a loan to her husband and that she was simply his surety. The Court decided that if Mr. Viser was right there was no liability resting either upon Mrs. Scruggs or her property, as the laws of Mississippi did not authorize a married woman to borrow money. Inasmuch, however, as the evidence showed that the transaction was entirely between Mr. Viser and Jno. W. Scruggs' that the money was paid to Mr. Scruggs and not to his wife, and there was no evidence to show that she ever got one dollar of it, or that any part of it had been expended for her

benefit or upon her property, and to put the matter in the best possible light for Mr. Viser, the Court adopted the view of it contended for by Mrs. Scruggs, and in the Court's opinion, sustained by the evidence, held the recitals in the notes to be false and treated it as a loan to the husband with the wife as his surety.

Section 23, p. 335 of the Revised Code of 1857 of Mississippi, after setting forth the right of a married woman to her separate property, is as follows: "And such property, whether owned by her before marriage, or which may have accrued to her afterwards, shall not be subject or liable to be taken in satisfaction of the debts of the husband * * * * * and no conveyance or incumbrance, for the separate debts of the husband shall be binding on the wife beyond the amount of her income." The Supreme Court held that under this statute the trust-deed executed to Mr. Viser bound the *income* of the property embraced in it, but that the *corpus* of her estate could not be subjected to the payment of his debt. Mr. Viser also attempted in this case to fasten a liability upon the property by virtue of an alleged promise to pay the debt made by Mrs. Scruggs after the death of her husband. Upon this point, however, the Court held that "The subsequent promise of Mrs. Scruggs after she became discovert, did not and could not have the effect to vivify and vitalize the debt, so as to give it effect on the incumbrance to any greater extent than both or either were operative and valid at the time they were contracted and made." It had been before decided by the same Court that the promise of a woman, after she becomes discovert, to pay a debt contracted when married, cannot vitalize a contract void at the time it was made, because of her coverture, nor increase the liability of her property beyond the extent to which she had the power to incumber it when the incumbrance was created.

Porterfield vs. Butler, 47th Miss., 166.

It seems that the District Court had but little respect for the decisions of the Supreme Court of the State, for in the face of both of these decisions in a suit instituted by Mr. Viser in the United States Court for the collection of this very debt, and based upon this same promise to pay made by Mrs. Scruggs after discoverture, the District Court, after the question had been adjudicated and decided adversely to Mr. Viser by the Supreme Court, sustained his suit as to $1,382 05, and rendered judgment against her for that amount. (Record, p. 195.)

This judgment was rendered December 20th, 1875, and on the 25th of December, (Christmas) 1875, just five days afterwards, the Court, by a decree in the cause now under discussion, ordered the judgment paid out of the money belonging to Mrs. Scruggs, paid into Court by the Memphis & Charleston Railroad Company. The order was obeyed, Mr. Viser got the money and the master in his report stating the account between them, gave Mr. Viser credit for it as a part of the $5,000 00 loan. (Record, pp. 98 and 114.) From the judgment, however erroneous, Mrs. Scruggs had no appeal. Her only redress is to ask here that the money appropriated in this cause to its payment, be restored to her. The judgment for $3,807 27 afterwards rendered against her and appellants, E. R. and James Mathews, on the refunding bond, was for the balance reported to be due Mr. Viser over and above the $1,382 05 paid him while the cause was pending. The entire amount that the Court gave to Mr. Viser was $5,189 32. By the decision of the Supreme Court in the case of Viser vs. Scruggs, the nature of the contract between them, the rights of the parties under it, the extent of the incumbrance and the liability of her property, have all been fully adjudicated and finally settled by a court of competent jurisdiction. They cannot be considered here. The only question that could have been properly before the District Court was how far, under this decision, *the money due Mrs. Scruggs from the Railroad Company* was liable to payment of Mr. Viser's debt, *as the income of the property embraced in the deed of trust.* The Court will bear in mind that, by the laws of Mississippi then in force, no personal liability rested upon Mrs. Scruggs. Such a thing as the personal liability of a married woman or personal judgment against her, was not recognized in this State. Unless it was shown that she owned a separate estate, suit could not be maintained against her at all; and any judgment rendered against her was in the nature of a judgment *in rem* against her separate property and must so appear upon its face.

Bank of Louisiana vs. Williams, 46 Miss., 629 and 30.
Mallett vs. Parhan, 52 Miss., 921.

Nor was there any liability resting upon her property on account of her suretyship on the notes. She could not bind her property in that way for a security debt. The only liability at all was by virtue of the trust-deed, and that bound only the income of the property embraced in

it. To secure this income Mr. Viser had but one recourse. It was to have the property placed in the hands of a receiver, and the rents and profits of it applied to the payment of his debt. In the case of Erwin vs. Hill, et als., 47 Miss., 677, the Supreme Court of Mississippi, after deciding that an absolute conveyance in fee simple by the wife of her separate property to pay a debt of her husband, bound only the income of the property conveyed, say: "And this income can be realized *only* by placing the property in the hands of a receiver, to manage and rent it out, and apply the rents, profits and income to the payment of the debt, and to render an annual account to the court of the same." See also:

Hand vs. Winn, 52 Miss., 787.

Reed vs. Coleman, 51 Miss., 835.

In the last named case the court decided that the receiver could only hold the property during the life-time of the wife, as, after her death, it would no longer belong to her, and the income would go to those then owning the *corpus*. The theory is, that it is only during her ownership of the property that the income is bound; otherwise the corpus of her estate would be practically subjected to her husband's debts, especially where the interest on the debt exceeded the income of the property. Mr. Viser failed to pursue his remedy. His debt became due on the 11th day of May, 1870; yet he took no steps to collect it till the last of November, 1872, and then attempted to reach the property by an attachment suit at law. This was one year and a-half after the award of the arbitrators had been rendered, and nearly a year after the final decree of the Chancery Court of Alcorn county, affirming it. (Record, pp. 85 and 48.)

It is true that in the Chancery suit instituted against him in the State Court by Mrs. Scruggs, he did finally get a decree to have the property placed in the hands of a receiver. (Record, p. 163.) But this was in 1876, after the District Court had decreed that the rents and profits of the property belonged to the Memphis & Charleston Railroad Company, and while the hotel was in the hands of the receiver appointed by the United States Court. It was too late then. Mrs. Scruggs never had possession of the property, nor did she ever receive any of its income after the District Court took charge of it.

It is contended, however, that inasmuch as the debt due Mrs. Scruggs from the Railroad Company was for the

value of the hotel, the interest on this debt represented the income of the property and was bound by the trust-deed. I do not think that this construction of the statute is tenable. Suppose that on the 21st of April, 1871, the date of the award, the Company had paid Mrs. Scruggs the amount then found to be due her, would it be contended that any part of it was bound by the trust-deed as income of the property? It was not income in any sense of the word, but the cash value in money of the *corpus* of her estate, and was in no way liable for Mr. Viser's debt. Not a dollar of it could have been taken and appropriated to its payment. Mrs. Scruggs could have taken the money and used it and incured no liability. Not only the money itself was not subject to the mortgage, but the thing it paid for—the *corpus* of her estate—was not subject to it. The money did not represent the value of anything bound for his debt. Suppose when Mrs. Scruggs received this money she had loaned it to some third party, would the court hold that the interest on the loan was the rents and profits of the hotel at Corinth? If it was not rents in the hands of a stranger, it was not in the hands of the Railroad Company. The fact that her debtor was one person or another could not change the character of the interest due her on her money. But whether the interest was bound or not, Mr. Viser never got one dollar of it. His debt was not paid out of interest money, but the court gave the Railroad Company the entire interest and nearly $9,000.00 out of the *corpus*, as a credit for the rents of the hotel during litigation. Mr. Viser's debt was paid out of the balance of the *corpus* after the Company had been satisfied. The court held that the Company owed Mrs. Scruggs the $31,666.66 found to be due by the arbitrators, with interest from the date of the award, but that it had, at various times during the period of litigation, paid her by occupation and rent of the hotel, $15,588.55. Or in other words, that the Company had paid Mrs. Scruggs all of the interest and $9,087.03 besides. It will not do to say that the entire $15,588.55 was paid on the principal of the debt, and that the interest was left unpaid for Mr. Viser. There is no principle of law or business that will credit, under any circumstances, a payment made by a debtor upon an interest-bearing debt entirely to the principal of the debt while the interest is left unpaid. On the contrary, it has been expressly decided by our Supreme Court that the law in this State is just the other way, and is so fixed by statute.

Rev. Code of 1857, of Miss., p. 370, Art. 4.
Brooks vs. Robinson, 54 Miss., p. 272.

And besides, the report of the master, which was confirmed by the court, shows that in stating the account between the Company and Mrs. Scruggs, he followed the well-settled rules of business and law, and calculated the interest up to the date of each payment, deducted the payment from the aggregate amount, and treated the balance as a new reduced principal. Not a dollar of interest was left, or set aside or ever paid to Mr. Viser.

The theory advanced by the District Judge, (Record, p. 196,) that if Mrs. Scruggs received any of the interest she must refund it to Mr. Viser out of the *corpus* of her estate, is not sustained by the laws of this State nor the decisions of our courts. It is contrary to the whole system of law then in force relative to married women. To hold this is simply to abrogate the statute. It takes the *corpus* of her estate to pay the debt, and this is exactly what the statute says shall not be done. To say that only the income shall be bound for the debt, but that the *corpus* is bound for the income, is an absurdity. To say that only the income of the property embraced in the deed is bound for the debt, but that her other property not embraced in it is bound for the income, is equally absurd. When a statute says that in no event shall any but a certain species of property be subjected to the payment of a certain debt, and by any means this property gets out of the way or is destroyed, that is the last of it. To hold that some other property shall be subjected in its place, is to annul the law. Especially is this true where, as in the case of a married woman, the statute says that she shall not have the power, even by her absolute deed, to bind anything but the income of the property embraced in it. Certainly she cannot, by the simple use of the income subject her property to the payment of a debt which the law expressly says she shall not have the power to subject to it by her solemnly executed deed.

While the laws of Mississippi were liberal in allowing a married woman to bind her property for debts contracted for her own support or the benefit of her separate estate, they were jealous in their protection of her against the fraud, force or undue influence of her husband. They did not allow her to part with her property to pay his debts. She could only bind the income and that only by deed. The case at bar comes directly within the rule and object

of the law. Here the money was loaned to the husband, was paid into his hands. No part of it was ever given to the wife nor expended for her use or for the use of her children or benefit of her property. There was no consideration to her for the trust-deed. It is precisely one of those cases where the law seeks to shield her from the influence of her husband and prevent her separate estate from being sacrificed to the payment of his debts. When Mr. Viser accepted the mortgage he knew, or the law so presumes, that it only bound the rents of the hotel and furniture; and that he had no personal claim against Mrs. Scruggs. He knew that his only remedy, in the event the money was not paid, was to have the property placed in the hands of a receiver and the rents applied to the payment of his debt. He also knew that this remedy was likely to be defeated at any moment by the Company's paying for the hotel and taking possession of it under the original contract with Jno. W. Scruggs. If in order to make his 20 per cent. usurious interest he allowed the debt to run until his remedy was so defeated, he has only himself to blame. He cannot avoid the consequences of his own negligence and delay by this effort at subrogation. Mr. Viser also knew that if he failed to assert his rights and have the property placed in the hands of a receiver, but allowed Mrs. Scruggs to remain in possession of it and to collect and appropriate the income, the rents so collected and appropriated by her were lost to him. That he could not hold her personally liable for them; he could not fasten his debt upon either the *corpus* or income of any other property owned by her; and that under no circumstances could he subject the *corpus* of the property embraced in his mortgage. He knew his rights and had his remedy. He failed to assert them and has lost his debt.

I respectfully submit that the District Court could not properly give the income of Mrs. Scruggs' estate to the Railroad Company in the way of rents of the hotel, and then give the same income to Mr. Viser in the way of interest on the money. Yet it has not only done this, but taken the *corpus* of her estate to pay both. If *both* are not error, *one* must be.

The Court erred in rendering judgment against appellants E. R. Mathews and James Mathews in favor of James H. Viser, on the refunding bond.

When the refunding bond was executed and filed, Mr. Viser was not known in the case. He was made a party

to it afterwards. The condition of the bond is as follows: "Now if the said Circuit Court of the United States or the Supreme Court, shall hereafter decree that the said Narcissa Scruggs shall pay to said Memphis & Charleston Railroad Company, any moneys she may collect on said final decree of the Chancery and Supreme Courts of Mississippi, and under the order of this Court dissolving said injunction; and if said Narcissa Scruggs shall pay over according to the decree of said Circuit Court any money so collected by her, then this obligation to be void, otherwise to remain in full force and effect." (Record p. 69.)

The bond is made payable on its face to the Memphis & Charleston Railroad Company. When it was given, the Company and Mrs. Scruggs were the only parties to the suit. That the sureties would be liable for Mrs. Scruggs' debt to Mr. Viser or any other outside party at the time was not contemplated by the Court or appellants. Nor was it supposed that she was giving or intended that she should give a bond to satisfy the claim of any one other than the Railroad Company. When the bond was given the only question before the Court was whether the Company or Mrs. Scruggs was entitled to the rents of the property. If the Court should decide in favor of the Company, $20,000 had been already retained by it to satisfy its claim, and in all probability but a very small balance could be found wanting. As it turned out $179 was the entire amount of this balance. To require this bond, under these circumstances and after the sureties had signed it and it had been filed, to bring into the cause new parties and an entirely new case, involving new issues and the payment of an entirely new debt; and then to decide this new case against Mrs. Scruggs and give judgment for the amount of Mr. Viser's debt against the sureties on the refunding bond, was not treating them fairly, and I submit, was error.

Respectfully submitted,

H. P. BRANHAM,
Solicitor for Appellants.

OFFICE SUPREME COURT U. S.
FILED
MAR 8 1883
JAMES H. McKENNEY, CLERK

108-368

In United States Supreme Court.

NARCISSA SCRUGGS ET AL., APPELLANTS,

vs.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY AND JNO. H. VISER, APPELLEES.

BRIEF.

HUMES & POSTON,
For Memphis & Charleston Railroad Company.

A. BRENTANO & Co., Printers, Washington, D. C.

Supreme Court of the United States.

NARCISSA SCRUGGS ET AL., APPELLANTS,

vs.

THE MEMPHIS AND CHARLESTON RAILROAD COMPANY AND JNO. H. VISER, APPELLEES.

Brief and Argument of W. Y. C. Humes and D. H. Poston for Memphis & Charleston Railroad Company.

FACTS.

The bill in this cause was filed by the Memphis and Charleston Railroad Company in the Chancery Court, at Corinth, Mississippi, in January, 1875, to enjoin a decree rendered 8th of January, 1872, by the Chancery Court of Alcorn county, Mississippi, in favor of appellant, Narcissa Scruggs, and against the Memphis and Charleston Railroad Company, for the sum of $31,666.66, and interest thereon from 21st January, 1871.

See Record, pp. 49, 50, 51.

This Chancery Court decree was affirmed by the Supreme Court of Mississippi on the 14th day of December, 1874, and a decree rendered against said railroad company and its sureties on appeal bond for the debt and interest, and $1,583.33 damages, the whole to bear interest until paid.

See Record, p. 54.

This decree and its affirmance was predicated upon an award made by certain referees or arbitrators selected by the parties to ascertain and fix the value of a certain leasehold and improvements, owned and held by the appellant, Narcissa Scruggs, upon the property of the Memphis and Charleston Railroad Company at Corinth, Mississippi, and which valuation, by the terms of the submission, when ascertained and determined by said referees, was to be paid to Narcissa Scruggs by said railroad company in full of all of her interest in such lease, contract, and improvements.

See articles of submission, Exhibit B, record, pages 24, 25, 26.

The referees made their award 21st April, 1871, as follows:

"And we, the undersigned arbitrators, after hearing the arguments of counsel and all the evidence and being fully satisfied, do order, adjudge, and decree that the Memphis and Charleston Railroad Company shall pay to the said Narcissa Scruggs the sum of thirty-one thousand six hundred and sixty-six dollars and sixty-six cents, in full payment of all the improvements placed on the ground occupied by the Scruggs House on the grounds of said company, at Corinth, Mississippi, and on payment of said sum of money, the said Narcissa Scruggs shall deliver possession of said hotel to said railroad company."

* * * * * * *

"We do further determine, that from the evidence in the case and the articles of submission and contract, that the sum to be paid by the Memphis and Charleston Rail-

road Company to said Narcissa Scruggs, is, as heretofore mentioned, the value of the property surrendered to the Memphis and Charleston Railroad Company."

See Record, p. 38.

In such submission the parties expressly agreed that the award of such referees should be entered as a decree of the Chancery Court of Alcorn county, and "that only the questions of the legal construction of said agreement as to the value of said improvements, and the amount which shall be paid, are submitted to said arbitrators; and all other questions arising under said agreement, whether as to the rights of the party to recover damages or otherwise, are hereby expressly reserved."

See Record, p. 27.

And in said Chancery Court at Corinth, when the bill was filed by the appellant, Narcissa Scruggs, against the Memphis & Charleston R. R. Co. for the specific performance of the award, an agreement of counsel was filed showing that the rent due to the Memphis & Charleston R. R. Co. was to be deducted from the amount found by the referees to be due by it for the leasehold and improvements.

See Record, p. 51.

The bill avers that after the affirmance by the Supreme Court of Mississippi of the decree of the chancellor on the award, that appellant Narcissa Scruggs, disregarding the question of rents, &c., caused an execution to issue against said railroad company and its surety on the appeal bond for the whole amount of the decree, and is attempting to coerce payment from the sureties who reside in Mississippi.

The bill avers that by the decree of both the Chancery and Supreme Courts of Mississippi the award of the referees of 21st April, 1871, and its affirmance by said courts, gave said Narcissa Scruggs a debt against said railroad company of $31,666.66, with interest from that date, and

left her a mortgagee in possession until payment was made thereof; said decree further providing that said railroad company should have thirty days to pay the money so decreed, with interest, from the date of the award, and in default ordered the property sold to satisfy the same. The bill further averred that Narcissa Scruggs had been in possession of the property from the date of the award to the filing of the bill, renting out the property and appropriating the rents to her own use. That the rental value for the year 1871 was from $5,000 to $7,000, and was actually rented for the year 1872 by said Narcissa Scruggs for $6,000, and for 1873 and 1874 at something less for each year, and that in addition she was liable for the rents up to April, 1871, of $250 per annum, and that upon this basis alone the decree should be credited with at least $25,000.

The bill further averred that under the agreement of November, 1871, (Record, page 51,) a reference was proper and necessary to ascertain the ground rent due, (which it was agreed should be deducted from the award,) and that a reference was also necessary to determine what sum should be deducted for rents from April 21, 1871, to the date of report, which also would be a proper credit on the award, and that said Narcissa Scruggs, who was insolvent and without other property in Mississippi than the decree or award, if allowed to collect the debt, was pecuniarily insolvent and irresponsible, and the offset or credit to which said railroad company was entitled would be a total loss.

The bill then prayed for an injunction to stay proceedings and enjoin the execution; for an account, and that the rents due be ascertained, and the decree of the Supreme Court be credited with whatever rents were and should be credited thereon on account of such rents as were collected or should be chargeable to said Narcissa Scruggs, and also with the ground rent in arrears, &c.

An injunction was awarded by the chancellor, upon bond being given, and such injunction bond being given, the injunction issued.

To this bill Narcissa Scruggs filed an answer admitting the submission, award of referees and decree of the court thereon, and its affirmance by the Supreme Court of Mississippi. She therein admitted her retention of the possession of the property, and that she had no other property in Mississippi except this claim; denied her liability for rent, or that she was chargeable therewith, and averred that she was not only entitled to the rents, but also to the amount of the award and interest from its rendition, and set up and relied upon the adjudication in her favor as *res adjudicata* and conclusive.

Upon a proper petition and proceedings the cause was removed to the United States Court at Oxford, Mississippi.

And a motion was made to dissolve the injunction—1st, For want of equity. 2d, Because all equities of the bill are denied by the answer. 3d, Because matters complained of are *res adjudicata*. 4th, Because rent claims were adjudicated and settled. 5th, Because the remedy is at law. 6th, For other causes apparent in the record.

See Record, 55.

And the motion to dissolve the injunction was partially granted, the court dissolving as to all but $20,000 of the decree, as to which it was retained.

Record, 59–60.

Afterwards, upon motion of said railroad company, the court ordered said Narcissa Scruggs to give a refunding bond to cover any sum that on final hearing might be decreed against her, which was accordingly given.

See Record, pp. 66–67.

And execution issuing for the balance of the award, less $20,000 enjoined, to wit, $21,336.99, the railroad company paid $19,217.63, to the marshal.

See Record, pp. 70–71.

And on 24th September, 1875, the said railroad company filed its amended bill and bill of interpleader, averring that since the filing of the original bill, J. H. Viser and W. F. Dowd claimed liens on this recovery against Mrs. Scruggs by attachment and otherwise, and the balance of the decree not enjoined or paid to the marshal, to wit, $2,510.83, it brought into court with its interpleader and asked to have the rights of all parties determined, making Viser, Mrs. Scruggs, and Dowd all parties thereto.

See Record, pp. 72, 73, 74.

On 24th December, 1875, the court adjudged said railroad company was entitled to the reasonable rental value of the property from 11th May, 1871, to date of receiver taking possession thereof, and a general reference.

See pages 96 and 97 of Record.

And on 25th December, 1875, made a decree that Viser was entitled to have $1,382.05 of the $2,510 paid in by the railroad company on its interpleader, being the judgment recovered by him against Mrs. Scruggs and the said railroad company as garnishee, and the balance was ordered to be paid to Sale & Dowd, attorneys for Mrs. Scruggs.

Record, p. 98.

The reports of the account between Viser and Mrs. Scruggs and the railroad company and Mrs. Scruggs were made, exceptions filed, and the court, on final hearing, gave the said railroad company a decree against Mrs. Scruggs and her sureties on her refunding bond for $179, balance due by her, and to J. H. Viser a decree against same parties for $3,807.27 and interest.

See Final Decree, pp. 117, 118.

From the decree the defendant, Mrs. Scruggs, has appealed.

The only error assigned as against the railroad company is that—

The court erred in allowing the Memphis and Charleston Railroad Company credits upon the amount of the award of the arbitrators and decrees of the State courts for rent of the hotel and improvements during the period of litigation between the parties.

Were the matters of rents concluded by the decree on the award? or could the Memphis and Charleston Railroad Company by this bill offset the decree on the award by the rents due prior to 21st April, 1871, or by the rents collected, or the reasonable rental value of the property while controlled by Mrs. N. Scruggs after April 21, 1871, to the date the receiver assumed possession and control?

The bill was eminently proper for that purpose. In the first place, when the submission to the referees was made, it was expressly agreed that only the legal construction of the contract and the *value* of the improvements were to be passed upon by said referees, and *all other questions were reserved.*

See submission, Record, pp. 26–27.

And on the 24th Nov., 1871, in the Chancery Court, where the award was being entered, an express agreement was made and filed to the effect that the question of rent was not acted on by the referees, and that whatever was due under the contract upon a settlement should be deducted from the amount of the award; the agreement provides expressly that "*the amount to be adjusted by a reference to the Master of the Chancery Court.*"

See Record, p. 51.

The bill in this cause averred this agreement, and that in violation thereof defendant N. Scruggs was attempting

to collect the whole decree on the award without this deduction; that she was insolvent and had no other property in Mississippi, and that in addition she had collected and was chargeable with the rentals collected, or the occupation and use of the property by her, to the extent of $25,000, which it had the right to have offset against said decree. Another ground was that no execution was awarded by either court, and the sale of the property only ordered on the failure of the railroad company to pay within thirty days, and yet defendant N. Scruggs had wrongfully sued out an execution, and in violation of both the decree and the agreement was attempting to collect the full amount of the decree, without the reference or crediting said railroad company with the amounts of credits to which they were entitled.

See Record, pp. 1 to 5.

Mrs. Scruggs, in her answer (Record, p. 13), admits that the agreement for a reference to the master was made; admits that she has no other property in Mississippi, but avers that these demands for rents are legal demands, and a court of equity has no jurisdiction.

See Record, 13, 14, 15.

She also claimed that she was not only entitled to the award and interest from April 21st, 1871, but was also entitled to the rents of the property after that time down to the surrender of the property in 1875.

By reference to the submission (Record, 25) it will be seen that it was agreed that the arbitrators "shall settle the construction of the said contract and fix the amount that is justly due by the party of the first part (said railroad company) to the party of the second part (said Narcissa Scruggs) for the value of said property, and on payment of said sum so fixed the party of the second part shall surrender said

property to the party of the first part, *and the amount so fixed shall be a lien* on said property."

Now, when said arbitrators rendered their award they held as follows: "Do order, adjudge, and decree that the Memphis & Charleston R. R. Company shall pay to said Narcissa Scruggs the sum of $31,666.66 in full payment of all the improvements placed on the ground occupied by the Scruggs House on the grounds of said company at Corinth, Mississippi, and on the payment of said sum of money the said Narcissa Scruggs shall deliver possession of said hotel to said railroad company."

See Record, p. 38.

In the bill filed by said Mrs. Scruggs to enforce this decree or award, she prays: "That said defendants shall pay complainants said sum of money, and that complainants' lien for the same on said property shall be enforced." (Record, 23.) And on 8th January, 1872, the Chancery Court decreed the award properly made and gave her a decree for the award, $31,666.66, and interest from 21st of January, 1871, and that upon its payment she make a deed for the improvements, but in default, that a sale be made to enforce the *lien*. (See Record, 50.) In December, 1874, this decree was expressly affirmed, with interest from its rendition, and $1,583.32 damages, at rate of 5 per cent. (See Record, 54.) Now, Mrs. Scruggs has treated this transaction as a mortgage, and the Chancery and Supreme Courts both have so decided. She asks to enforce her lien, and the arbitrators hold she has a lien on the property for the amount of their award.

Hill, J., presiding in the court below, in passing upon this matter, presents a correct exposition of the law of the case upon this point, and we quote his language as not inappropriate here:

"For the purposes of deciding the motion I am satisfied that from the 21st day of April, 1871, the parties did sustain the relation of mortgagor and mortgagee towards each other, Mrs. Scruggs holding a debt against the Memphis and Charleston R. R. Co., with a security upon the premises mentioned, and in addition to the lien upon the premises, was entitled to receipts of the rents and profits, to be applied to the payment of said indebtedness. It is contended with great earnestness, zeal, and ability by Mrs. Scruggs's counsel that by the award and decree she was entitled, not only to the interest upon the award and decree, but to the rents and profits; that the provision was that upon the payment of the amount so awarded and decreed, she should surrender the premises. The provision is not that upon the payment of the amount of the award and interest the surrender should be made, so that, to give a strict construction to the provisions stated, no interest could be charged, and Mrs. Scruggs would at most be entitled to the rents in lieu of interest. But she has not so treated her claim under the award and decree, but demands the principal sum and interest, and has obtained a decree from the Supreme Court, not only for this sum, but for 5 per cent. damages upon its affirmance; she has, by her proceedings, placed herself in the position of a vendor with a lien upon the property sold, prosecuting her bill for the collection of the purchase money for an enforcement of her lien by a sale of the property sold; or, as before stated, by her retention of possession occupies the position of a mortgagee in possession of the mortgaged property, her claim is the purchase money with interest for its detention.

"By long and well settled rules without an exception, so far as I am aware, persons occupying this position are required to account for the use and occupation, or rents and profits of the mortgaged property so held by them, whether prosecuting a suit for the recovery of the amount secured by the mortgage or upon a bill filed by the mortgagor to the decree. The rights of the parties are: the mortgagee, a creditor, is entitled to his money with interest, less the rents after deducting taxes, necessary repairs or other necessary expenses incurred on account of such property or estate, and when this is ascertained and paid, the mortgagor or debtor is entitled to the possession of the property, and if not paid by him when ascertained, the creditor is

entitled to enforce its payment by a sale of the property so held. To take the case out of these well established rules, there would have to be contained in the contract a clear and unmistakable agreement to that effect, even if such a contract could be held binding.

"I am satisfied that for the purposes of this motion the complainant must be held entitled to have credit upon or abated from the amount of the decree against it the value of the annual rents of the premises so held, less the taxes and necessary expenses paid upon it accrued since the 21st April, 1871. I am in much greater doubt as to the ground rent claimed before that time, a large portion of which would now be barred, and other portions doubtless subject to setoff; and, therefore, without deciding anything in relation to this part of the claim for the purpose under consideration, will place little estimate upon it." * * *

See Record, 188, 189.

In Jones on Mortgages, 1 vol., sec. 60, that author says:

"No particular form is necessary to constitute a mortgage. It must clearly indicate the creation of a lien, specify the debt to secure which it is given, and the property on which it is to take effect."

And same author in section 11 of same volume says:

"In equity a mortgage of land is regarded as a mere security for a debt or obligation, which is considered the principal thing and the mortgage only as accessory."

No more perfect mortgage could be given than the article of submission exhibits. The parties agree to sell the improvement particularly described upon a valuation to be made, and reserve the lien to secure the price.

See submission, Record, 26–27.

In Mississippi, where this mortgage was made, in the case of Carpenter *v.* Bowen, 42 Miss., at page 49, Peyton, J., says: "This equitable doctrine concerning the rights of mortgagor and mortgagee has gradually been naturalized in the common law code, and by adoption of princi-

ples long established in chancery it has become well settled in courts of common law that the mortgagee, until foreclosure, has only a chattel interest; that a mortgage is but a *charge* upon the land, and that whatever would give the money will carry the estate in the land along with it, to every purpose."

The mortgage was sufficient when it provided that the consideration therefor was the payment of the valuation to be assessed by parties chosen to do so. A mortgage to indemnify against liability, or to secure future indebtedness or advance not determined, is sufficient.

Jones on Mortgages, 64-70.

So is a mortgage "to pay what I owe him," or "the obligations I have endorsed for him," &c.

Jones on Mortgages, 343, 344, '5, '6, and cases there cited.

Here then was the mortgagee in possession, receiving the rents from April 21, 1871, to 1875, and she was clearly liable therefor.

"A mortgagee in possession, whether in person or by a tenant, is accountable for the rents and profits of the estate, and is bound to apply them in reduction of the mortgage debt."

Jones on Mortgages, sec. 1114.
2 Washburne on Real Property, p. 221, sec. 1, p. 222, sec. 3, and p. 236, sec. 16.
2 Hilliard on Mortgages, 449.
Anthony *v.* Rogers, 20 Mo., 381.
Gordon *v.* Lewis, 2 Sumner, 143.
Moore *v.* Cable, 1 Johnston Chancery, 385.
Lupton *v.* Almy, 4 Wisconsin, 242; 20 Wisconsin, 478.
Childs *v.* Childs, 10 Ohio State R., 339.
Story's Equity Jurisprudence, 1016 a, b, c.
1 Vol. Smith's Leading Cases, p. 666.
Carpenter *v.* U. S., 17 Wallace, 489.

It is equally clear that where a mortgagee himself has occupied the premises, and has kept no proper account of rents and profits received by him, that he is chargeable with the reasonable rentals or a fair occupation rent there for.

Jones on Mortgages, 1122–1124, and cases cited.

We deem it unnecessary to pursue this branch of the case farther, as it must be perfectly evident to the court that the decree of the court below was proper, wherein it adjudged that the contract between the parties created the relation of mortgagor and mortgagee, and that said railroad company appellee had the right to an accounting for the purpose of redemption, and for this purpose to suspend the executions improperly issued until the matter of account was settled and the balance due ascertained. In fact, the agreement entered into was that the rents were to be ascertained and deducted from the award, such ascertainment to be by a reference to the Master of the Chancery Court.

See Record, 51.

It appears from the record, and, in fact, Mrs. Scruggs now asserts her right to the rents received by her and refuses to account for the same, claims both interest on the award, $1,583.06, damages for detention, and also the rents of the property. The railroad company was, therefore, compelled to file a bill for redemption and an account, and the bill was, therefore, properly filed. That said railroad company can sustain this bill as to the matter of set off is clearly sustained.

Story's Equity Jurisprudence, secs. 1435, 6–7.
Adams' Equity, p. 507–8.
Graves & White *v.* Hall, 27 Mississippi, 419.
Gray *v.* Rolla, 18 Wallace, 629.
Waterman on Setoff, secs. 395, 396, 391, 394, 444.
2 Paige, 581, Lindsey *v.* Jackson.

Treating the bill in this cause as a bill to redeem, the railroad company had a clear right to compel the mortgagee in possession to credit her mortgage debt by rents collected, or occupation rent, and as a satisfaction *pro tanto* of the debt.

Jones on Mortgages, sec. 1114.

The relief being equitable only, the injunction against the execution was proper.

High on Injunctions, secs. 77, 137, 139.

Defendant being insolvent and without property in Mississippi, said railroad company had the right to abate the amount to be collected under said award by the amount of her indebtedness to him, and for this purpose to enjoin the judgment until this sum was ascertained.

Kerr on Injunctions, 141.
High on Injunctions, secs. 74, 136 to 142.
Graves & White *v.* Hull, 27 Miss., 419.
Edminson *v.* Baxter, 4 Haywood (Tenn.), 301.
Smith *v.* Ross, 3 Humphreys (Tenn.), 220.
Hough *v.* Chaffin, 4 Sneed, 238.
Brazleton *v.* Brooks, 2 Head (Tenn.), 195.
Linsay *v.* Jackson, 2 Paige Ch., 581.

Where there is a clear, natural connection between the claims, and both originate from one transaction, a court of equity will interfere to prevent the one party from enforcing his claim without allowing the other, although one of the claims is unliquidated.

Kerr on Injunctions, 68.
Southeastern R. R. Co. *v.* Brogden, 2 Mac. & Gord., ch. 25.

Mrs. Scruggs by her answer shows the propriety and necessity of the injunction, as she not only claimed, but

even now insists upon her retention of the rents and also the enforcement of her decree, and this in violation of her agreement to credit the award by the amount of rents prior to April, 1871, and her duty to credit those received thereafter.

Did the final decree on the account, as stated by the master, do Mrs. Scruggs any injustice? If so, in what particular?

The decree of the court referring this matter to the master was clearly not in our favor, as it allowed her credit for *insurance* to which she was clearly not entitled; in fact, it was, as made in many particulars, unfavorable to us and favorable to her. The decree was as follows:

"But the court is of opinion and doth adjudge that said company is entitled to have credited on the amount awarded and decreed the reasonable rents which she actually received or might have received by prudent management, or for any period she actually, by herself or agent, occupied the hotel and property at Corinth, from the 11th day of May, 1871, forward to the date of the receiver's taking possession under the former order of this court. If during this period the defendant Narcissa has, by herself or agent, occupied said property, or any part thereof, she will be charged with the reasonable rental of said property during such period; she will also be charged with the rents she or her agents actually received, or by prudent management might have received, and the same will be credited on said decree. She will be allowed for any insurance, or taxes, or reasonable repairs she may have paid on said property since the 11th of May, 1871. The question of the ground rent due complainant before April, 1871, and also the rent of the property from April 21st, 1871, to May 11th, 1871, is reserved for the final hearing. It is further ordered that the clerk and master of this court take and state an account between the parties, and report to the next term of this court; in taking and stating said account he shall inquire and report—

"First. What time or period of time, after May 11, 1871, did Narcissa Scruggs, or her agents, occupy said hotel and property, and what was the reasonable rental value of the same during such time or times?

"Second. What rents did she or her agent actually receive for the lease of said property for any period or periods of time after the 11th of May, 1871?

"Third. What amount of rents did she fail to collect, and what was the cause of such failure? Was it lost by want of prudent management or otherwise?

"Fourth. What amount of taxes, insurance, or repairs on said property did she pay after May 11, 1871? In ascertaining the rent and rental value he will exclude the rent of the personal property and furniture in said hotel.

"Fifth. He will deduct the yearly rent, as he ascertains it, from the amount of decree and interest up to the end of each year, after first deducting the insurance, repairs, and taxes paid by her during such year from the rent.

"Sixth. He will deduct from the balance, after crediting all the rents, as above, the amount paid into this court by the complainant at its proper date. He will also allow the Memphis and Charleston road credit for the sum of $2,325 as of the 28th of June, 1872, alleged in the amended bill, and not denied. Said sum is a proper credit on the decree as paid by the company. The clerk and master will also report as two separate items the ground rent due, allowing all just credits, and the rent of the property from the 21st of April, 1871, to May 11, 1871, as to which all questions are reserved. On this inquiry the clerk and master will consider the testimony now on file, as well as any that may be offered or taken in the meantime.

"The rents as collected by the receiver shall be applied as a payment on this decree on the receipt of the solicitors of Narcissa Scruggs. Costs of this cause reserved to the final hearing. R. A. HILL, *Judge*."

The master reported as due to the said railroad company by Mrs. Narcissa Scruggs on such reference, the balance of $2,615.36, his report being as follows:

Memphis and Charleston R. R. Co. in account with Mrs. N. Scruggs.

Apr. 21,	1871.	To amount of award of this date		$31,666 66
"	1872.	To interest to this date		1,899 99
"	"	To amount due this date		33,566 65
"	"	By occupation rent one year		6,000 00
"	"	To balance due this date		27,566 65
June 28,	"	To interest to this date, 2 m. 7 d		308 73
"	"	To total amount due this date		27,875 38
June 28,	1872.	By payment Donegan draft		2,325 75
"	"	To balance due this date		25,549 63
Aug. 1,	"	To interest to this date, 1 mo. 3 d		140 51
"	"	To total amount due this date		25,690 14
"	"	By amount paid by Chapman		1,069 55
"	"	To balance due this date		24,620 59
Dec. 1,	"	To interest to date, 4 mo		492 41
"	"	To am't due this day		25,113 00
"	"	By occupation from Aug. to Dec. 1, 4 m., $300		1,200 00
"	"	To balance due this date		23,913 00
Dec. 31,	1873.	To interest to date, 13 mo		1,554 34
"	"	To am't due this day		25,467 34
"	"	By Gillenwater's rent		4,119 00
"	"	To am't due this day		21,348 34
"	1874.	To interest to this day		1,280 90
"	"	To am't due this day		22,629 24
"	"	By damages awarded by sup. ct.	$1,583 33	
"	"	By interest on same from 14 to 31 Dec., 17 days	3 47	
				1,586 80
"	"	To am't due this day		24,216 04
"	"	By rent from J. P. Young		3,600 00
"	"	To balance due this date		20,616 04
April 1,	1875.	To interest to this date, 8 mo.		824 64
"	"	To am't due this date		21,440 68
"	"	By 8 mo. rent, at $150		1,200 00
"	"	To balance due this date		20,240 68

	Amount brought forward		$20,240 68
April 1, 1875.	By payment of 28th August on decree	$19,217 63	
" "	By interest on above payment, 3 days	9 60	
			19,227 23
April 1, 1875.	To balance due this date		1,013 45
Sept. 22, "	To interest to this date		3 52
" "	To am't due this date		1,016 97
" "	By payment on interpleader		2,510 85
Sept. 22, 1875.	By bal. due M. & C. R. R. this day		1,493 88
June 1, 1877.	By interest on bal. to this date		151 36
Jan. 1, 1876.	By am't paid by receiver to Col. Dowd		456 00
June 1, 1877.	By interest to date		38 25
" "	By am't due M. & C. R. R. Co.		$2,139 49

The undersigned further reports that the notes in the hands of Mrs. Scruggs or her solicitors, Sale & Dowd, that remain due by Chapman and his sureties, have not been taken into the foregoing account, and Mrs. Scruggs is only charged with $1,069.55, the amount of rent actually received from Chapman, whilst Chapman occupied it four months at $500 per month, and submits to the court whether these notes, or the difference between $1,069.55 and $2,000, to wit, $930.45, should be charged to Mrs. Scruggs.

The undersigned further reports as to the second item submitted on the question of ground rent as follows:

Mrs. Scruggs to M. & C. R. R. Co.

DR.

To ground rent:			
May 1, 1866, to May 1, 1867			$250 00
" 1867, " " 1868			250 00
" 1868, " " 1869			250 00
Mar. 30, 1867, 9 cords of wood at $3			27 00
" " hauling same, " 2			18 00
			$795 00

CR.

Mar. 31, 1871.	By bill for board of hands	$256 84	
Jan. " 1868.	By discount on freight bill	47 70	
Jan. " 1869.	Bill for board of hands	14 15	
			319 13
Balance due M. & C. R. R.			475 87
Am't brought down from first item			2,139 49
Am't due M. & C. R. R., including acc't ground rent			$2,615 36

All of which is respectfully submitted.

May 18, 1877.

G. R. HILL,
Master.

See Record, pp. 109, 110.

To this report said railroad company filed no exception, but Narcissa Scruggs, by her counsel, filed the following:

"And afterwards, to wit, on the 5th day of June, 1877, exceptions were filed to the report of master between Mrs. Scruggs and said road, in the words and figures following, to wit:

"*Exceptions.*

"MEMPHIS & CHARLESTON R. R. Co.
v.
NARCISSA SCRUGGS.

"The defendant, by her counsel, excepts to the reports of the report of Geo. R. Hill, clerk and master, in taking and stating the account between the parties, and moves the court to set it aside and remand the cause to the master to retake and restate the account under the instructions and directions of the court, for the following reasons:

"1. The account was taken and stated without any notice to the counsel of defendant, or to the defendant herself.

"2. The clerk and master erred in allowing a credit of $6,000 for the use of the property for the year 1871–'72, being wholly unsustained by proof.

"3. The clerk and master erred in allowing a credit of $1,200 for occupation from August 1, 1872, to December 1, 1872, contrary to law and without proof.

"4. The clerk and master erred in allowing a credit of $3,600 rent from J. P. Young, when the proof and record shows that that sum was forcibly seized by a receiver under an order of the Chancery Court of Alcorn county and paid to J. H. Viser.

"5. Because the several credits allowed are barred by the statute of limitations, and the remedy, if any, is at law to complainant for the recovery of the money.

"6. Because the several items of credit allowed by the clerk and master have been adjudicated by the State courts of Mississippi, and this court has no jurisdiction.

"7. Because the several items of credit allowed for the use and occupation of the property are illegal, because defendant, during the first year, 1871–'2, was a married woman and the premises were occupied by her husband, and because the complainant had no lawful right to force her to become their bailee and tenant.

"8. Because said report does not allow the sum of two thousand dollars paid by Matthews, agent for Scruggs, in insurance, taxes, and repairs, and other sums of money proven by the testimony.

"9. Because said report is otherwise illegal, informal, and defective.

"DOWD, *Sol. for Deft.*
"G. R. HILL, *Clerk.*

"Filed June 5, 1877."
Record, p. 115.

Now as to the exceptions of Mrs. Scruggs:

The first exception is to want of notice. This is too general. The party must show by affidavit some injury; that he has been deprived of some proof, and move to open the account to allow its introduction. It was moreover withdrawn at the hearing.

See Opinion, Record, 197.

The second exception is that the credit of $6,000 for use of property for 1871 and 1872 was erroneous, being unsupported by the proofs.

The record shows that John W. Scruggs and his wife occupied the property from April, 1871, to April, 1872, and is charged with the reasonable occupation rental thereof.

See deposition of E. R. Mathews, 1 X-Int., Record, 132.

See deposition of E. R. Mathews, 10, 11 and 12 X-Int., Record, 133.

Now the hotel was worth $6,000 per annum. J. P. Young says he offered $6,500 for it.

See J. P. Young's deposition, Q. and Ans. 1, Record, 136–8.

J. E. Gillenwater testified the rental value was $7,000.

See Record, 32.

B. P. Scruggs shows that the gross income for 1870 was $52,000, and it required 50 per cent. to pay expenses, including repairs and insurance on the property; that the rents from the bar and billiards was $3,750 per annum.

Record, 33.

W. G. Campbell proposed in 1871 to give $6,000.

See his deposition, Record, 33.

John W. Scruggs, husband of Narcissa Scruggs, swears, in 1871, as follows: "I think the annual value of the bar and billiard room is about $5,000 or $6,000. The annual rental value of the property, I *think, is* $7,200; *have been been offered that amount for it.*"

See Record, 36.

This was the proof, and the court, without any contrary proof, cut down this year's rent to $4,500.

See decree, Record, 117, 118.

The court in its opinion shows that there was no warrant for such action, for it says: "Complainant has produced no testimony, and relies upon the testimony of Mr. Scruggs, which would seem to justify the charge. * * It is true that at the end of the year it was leased to Chapman at $500 per month, but he soon failed."

See opinion, Record, p. 197.

The action of the court cut us out of $1,500, as it reduced that year's rent to $4,500, when we were clearly entitled to the $6,000.

The third exception by Mrs. Scruggs is to the charge of $300 per month, from August 1, 1872, to Dec. 1, 1872, during the time she occupied it.

This was a proper charge.

Matthews, her agent, rented it to Chapman until August, 1872, at $500 per month, and then rented it to Gillenwater for thirteen months for $4,119.

See his deposition, answer 2. Record, p. 132.

That the renting to Gillenwater was from December 1, 1872, to December 1, 1873, is shown by J. P. Young's deposition and answer to int. 3. Record, p. 128.

Hence, the occupation rent from August 1, 1872, to December 1, 1872, at $300 per month, was not excessive.

The fourth exception is to the credit for the $3,600 rent from Young, paid to the receiver in the Viser case. The rents were impounded and taken from the railroad company in a suit brought against Mrs. Scruggs by her mortgagee. Her remedy was, and is, against Viser, to whom it has been decreed, and who took the possession from her.

The fifth, sixth, and seventh grounds of exceptions are untenable, and have been fully answered in the preceding part of this argument.

The eighth ground of exception has no proof to sustain it.

E. A. Matthews, in his deposition, says: "I have to pay the annual taxes on said property, amounting in the aggregate to about $2,000."

See Record (Ans. 2), p. 132.

"The disbursements made by me were simply for the taxes hereinbefore stated."

Ans. X-Int. 35, Record, 134.

Now, to show that this exception is totally untenable, the agreement of counsel admits that no such taxes were ever paid.

See Record, 160.

To the opinion of the learned court below, disposing of these exceptions, we earnestly refer the court.

See Record, 197, 198.

The court also disallowed to us all rents in arrears on the rent contract due prior to 1871, which it was expressly agreed should be deducted from the award, making it clearly apparent that all the error that has ever occurred or been made was against our parties, and that we are the parties aggrieved.

As to the controversy between Mrs. Scruggs and J. H. Viser we insist we have no concern. We simply owed her for the property the amount of the award and interest, and the decision of the court, as we have shown, cut us out of at least $2,600, the only errors in the decree as between Mrs. Scruggs and the railroad company being against us, and these errors certainly will not be insisted upon or urged by Mrs. Scruggs in our behalf.

We rely confidently upon the authorities referred to in this brief to sustain the decision of the court below.

W. Y. C. HUMES,
D. H. POSTON,
For Memphis and Charleston Railroad Company.

108-368

OFFICE SUPREME COURT U.S.
FILED
NOV 23 1882
JAMES H. McKENNEY.

Supreme Court of the United States.

OCTOBER TERM, 1882.

SCRUGGS, &c., APPELLANTS

vs.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY, &c.

BRIEF FOR MR. VISER.

S. F. PHILLIPS,
For Mr. Viser.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1882.

SCRUGGS, &c., APPELLANTS

vs.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY, &c.

BRIEF FOR MR. VISER.

A full and accurate statement of the facts is contained in the brief for the appellants.

It will be enough to say here, in connection with the special interests of Mr. Viser, that under a contract betwixt one J. W. Scruggs and the defendant Company, made in 1857, the former had a certain estate in a hotel and lot of land at Corinth, in Mississippi, which at some time before 1869 he conveyed to his wife, (See 94 U. S., 22,) and which, during that year, Scruggs and his wife conveyed to secure a debt of $5,000 to said Viser for money lent. On the 21st of April, 1871, under a submission of the conflicting claims of Scruggs and wife on one side, and the Company on the other, growing out of the contract of 1857, an award was made that the Company should pay to Mrs. Scruggs the

sum of $31,666.66, and that upon receipt thereof Mrs. Scruggs should convey to the Company the lot above mentioned. The Company resisted the execution of this award, but in December, 1874, it was confirmed by the supreme court of Mississippi. Mr. Scruggs died in August, 1871, (Record, folio 251,) and Mrs. Scruggs, as under the award she had a right to do, retained possession of the lot. *In January, 1875, the Company filed a bill against her for an account of the rents made or that ought to have been made by her therefrom ,to be used by it as a set off against the award, and this is the present suit as originally instituted.* In September, 1875, the Company filed an amended bill in such suit (p. 72) stating that Mr. Viser had taken certain steps to enforce his claim against the lot in question, &c., and praying that he and Mrs. Scruggs should be required to interplead, and for injunctions, &c., (folio 140.) This was done accordingly, Mr. Viser by his bill (folio 161) giving a history of his claim and of the litigation in which he had been involved on that account, and submitting that by the law of the State of Mississippi and a decision rendered by the supreme court thereof in a suit betwixt himself and Mrs. Scruggs he was entitled to look to *the income* of the hotel lot for satisfaction; and that any interest payable upon the $31,666.66 given by the award should, in equity, be substituted for such income. This view was resisted by Mrs. Scruggs, (p. 90,) as was also the claim of the Company for an account and set off of the rents received by her. After some fluctuation in details the court recognized the right of the Company to the account claimed by it, and enjoined Mrs. Scruggs for receiving a part ($20,000) of the money previously allowed under the award, (folio 117,) and further ordered her to give a refund-

ing bond in $10,000, with security, for another part thereof, (folio 130;) the court also in the end allowed Mr. Viser's claim, and having in the course of the suit (p. 114) applied thereto a portion ($1,304.80) of a fund then in court to the credit of the cause, in a *final decree* (folio 220) ordered that the balance thereof be paid *by the obligors in the refunding bond:* from this decree the present appeal was taken, (folio 329, &c.)

The conveyance by Scruggs and wife for the benefit of Mr. Viser is to be found on p. 81 of the record. It is dated May 11th, 1869, and conveys the hotel lot to certain trustees to secure the $5,000 debt in question, and another, (since paid.) The provisions are as usual in the class to which it belongs.

The report of a suit in equity by Mrs. Scruggs against Mr. Viser and the trustees, seeking to restrain them from enforcing this conveyance *because executed during coverture, and not properly acknowledged*, is to be found in 49*th Mississippi*, pp. 705, &c. After overruling certain contentions by both parties, the court *quotes* as follows, from the Mississippi Code of 1857, p. 326, last clause of section 23, (upon the subject of the liability of the wife's property for the debts of the husband:) "And no conveyance or encumbrance for the separate debts of the husband shall be binding on the wife beyond the amount of her income;" and, having found as a fact that the debt of Mr. Viser was within the above language, a "separate debt" of the husband, *decides* that the effect of the conveyance to trustees was to create "an

encumbrance and security to the extent of the income of the property embraced" therein; certain interest stipulated for in the notes being stricken out as usurious.

The order for the *refunding bond* (July 22, 1875) was, (folio 130,) "that said Narcissa Scruggs give a refunding bond in the penal sum of $10,000, *conditioned to pay any money she may collect, as the court may hereafter direct.*" A bond was given accordingly upon the same day with a condition which, after reciting that "whereas another order was this day entered, * * * requiring said N. Scruggs to give a refunding bond," provided "now if the said circuit court of the United States, or the Supreme Court, shall hereafter decree that said N. Scruggs shall pay to said Memphis and Charleston Railroad Company any moneys (the money) collected on said final decree of the chancery and supreme court of Mississippi, and under the order of this Court dissolving said injunction, and if said Narcissa Scruggs shall pay over according to the decree of said circuit court any money so collected by her, then this obligation to be void, otherwise to remain in full force and effect." (Folio 131.)

[Another bond in the same words was subsequently given, with an additional surety (folio 134) probably to strengthen the former, and also to correct one inaccurate expression, (*last line but five;*) and this bond, although dated "August 5, 1875," *speaks* as of the date of the former bond, (July 22d,) and evidently refers to the same order, although specifying it as "*this day entered.*"]

The terms of this order and bond are also in accordance with the object of the company in moving for a relief

which the court chose to administer partly in this form, as will be seen by the affidavit of Mr. Poston, folio 115.

The errors in the decree, as assigned by the appellants, are:

1. The allowance to the company of credits for the rents received, &c., by Mrs. Scruggs during the period of this litigation.

2. The payment of the debt of Mr. Viser.

3. The order that such payment should be made by the persons who were sureties upon the refunding bond.

1. As for the first assignment, it seems that originally Mr. Viser was not specially interested therein, although it is proper to add that under any theory of that award which, at the instance of Mrs. Scruggs, has been enforced in the course of this litigation, this $31,666.66 became the thing really owned by her, the hotel lot being only *security* therefor; and, therefore, although she was entitled to the *possession* of this property until paid, she had no right to the mesne profits thereof, except precisely as in the same way that she held the lot itself, i. e., as trustee: "The sprout savors of the root." No hardships, (real or supposed,) encountered by Mrs. Scruggs by delay and litigation can change this. Both sides, as in all such cases, have their own forensic wounds, no doubt, to enumerate and lament over in this connection.

2. It has already been decided, in a suit betwixt Mrs.

Scruggs and Mr. Viser, by a competent tribunal whose interference had been invoked by the former, (the supreme court of Mississippi,) that Mr. Viser's debt was a charge upon the income of the hotel lot. Since August, 1871, a few months after the inception of this litigation, (counting from Mrs. Scruggs' bill in equity to enforce the award filed May 2, 1871,) Mrs. Scruggs has been a widow, and so *sui juris*. Therefore her subsequent dealing with the defendant Company was as binding upon her both for what she did and for what she ought to have done, as it would have been upon parties in general. As regards the company she could so waste her income as to give her creditor a claim upon the corpus of her estate. This would be the result if she had failed to obtain rents that she ought to have obtained, or had spent improperly that which she did obtain. In taking the account betwixt her and this company such loss would be hers.

If, therefore, according to familiar doctrine, in taking her accounts it appears that one of the two creditors may resort to either of two funds belonging to the common debtor, and the other to but one of these, such funds are marshaled. (Aldrich *vs.* Cooper, 8 Ves., 382; 2 Lead. Cases, Eq., 49.)

Mr. Viser's debt binds the *income* of the property alone; even although the femme subsequently became discovert, inasmuch as the husband's death could not change the nature of the encumbrance. Admitting, as suggested by the appellant, and as seems by the authorities which he cites, (Brief, pp. 17, &c.,) that this debt can be enforced in Mississippi *only* by laying hold of such income by means of a receiver or the like; this in principle is no more than to say that a court of equity, in order to satisfy such debt, must, *in the*

absence of a sufficient existing fund of income, itself lay hold of the corpus charged, and *perceive* its profits by the hands of one of its officers. Here, however, there is a sufficient income fund in existence—one that has been accumulated whilst the fund has been in the hands of the court. During the present litigation since 1871, equity has been invoked first by one and then by another of these parties to apply its peculiar methods in enforcing their respective rights in connection with this property. Accordingly the property and the fund have substantially been in the hands of the court; and inasmuch as income has in the meantime accrued thereupon that also has been done through the court. All that has been realized is subject to orders according to the course of the court; no less than if for purposes of security not required by the circumstances here, the hotel lot and fund thereby secured had always been in the hands of a receiver.

In this connection it seems plain that nothing has occurred to displace the lien of Mr. Viser upon the *income* of the hotel lot, or (treating the *price awarded* as taking the place of the hotel without prejudice to such lien—as seems to be the ground upon which this part of the litigation has been carried on) then to the *interest* upon the price thereof. The original right of Scruggs to compel the company to repurchase the lot was of course liable to be embarrassed by any mesne charge duly placed thereupon by him prior to such demand. Mr. Viser's lien, therefore, is entitled to a priority over the rights of the company in the present situation. It was competent and proper that the purchase money should be applied to exonerate the purchaser, and

this seems to have been tacitly admitted by all parties—supposing Mr. Viser's claim were valid in other respects.

Upon the whole, it appears, therefore, that, in stating the accounts of this case, *Mr. Viser* is to be held as obtaining satisfaction out of *income* alone, and the company, so far as that may be necessary, out of *principal*.

By the account taken betwixt Mrs. Scruggs and the company (p. 109; confirmed folio, 220) it is seen that there is an ample amount of income, virtually in the hands of the Court, for Mr. Viser's purposes.

3. As for the third exception, a reference to the order for the refunding bond, as well as to the bond (or bonds) given accordingly, above and pp. 66 & c, demonstrates that the latter was intended to be, and is upon its face, liable to satisfy any legitimate decree whatever in this case, whether in favor of the company or of any other person who might become entitled at the passing of a final decree.

S. F. Phillips,
For Mr. Viser.

10F-368

OFFICE SUPREME COURT U. S.
FILED
OCT 10 1881
JAMES H. McKENNEY, Clerk.

IN THE

Supreme Court of the United States.

No. 391.

NARCISSA SCRUGGS, E. R. AND JAMES MATTHEWS, APPELLANTS,

vs.

MEMPHIS & CHARLESTON R. R. CO. AND JAS. H. VISER, APPELLEES.

ABSTRACT OF RECORD.

To a suit in equity pending in the U. S. District Court for the Northern District of Mississippi, between the Memphis and Charleston R. R. Co., complainant, and Narcissa Scruggs, defendant, concerning certain property known as the Scruggs House, Hotel, in Corinth, Mississippi, the appellee, J. H. Viser, was made a party by an amended bill, and bill of interpleader, filed by said complainant, requiring him and the said Scruggs to interplead, and settle a claim held by the former against the latter, which claim was secured by a mortgage on the said hotel property. W. F. Dowd was also made a party to the bill of interpleader, and the R. R. Co. brought into court, and deposited, some funds, about $2,500, to abide the result of the claim of said Viser, and of said Dowd, against said Scruggs. —(See printed page of Record, 72.) J. H. Viser answered the bill of interpleader, and also filed a cross-bill against Mrs. Scruggs and the R. R. Co., setting up his claim, amounting to over $5,000, and praying for an injunction

to restrain the Company from paying over to Mrs. Scruggs certain moneys due by them to her, (on account of her transfer to them of the said hotel property,) until the debt due to him was satisfied.—(See Record, pp. 76, 84.)

Mrs. Scruggs was a *feme-covert*, at the time the debt to Viser was contracted, and according to the laws of Mississippi the mortgage on the hotel, *as being the deed of a married woman*, was binding only on the income or usufruct, and not on the corpus of the property itself.

About the time of the filing of the bill of interpleader, Viser obtained a judgment for $1,382.05, and costs, against Mrs. Scruggs, in a suit at law brought in said U. S. District Court for the Northern District of Mississippi, to recover certain installments due and in arrears on a personal promise made by her after she became discovert by the death of her husband, to pay the said debt by monthly installments, in which suit at law the M. & C. R. R. Co. had been summoned as garnishees. This judgment the said District Court, on the 25th of December, 1875, ordered the clerk of the court to pay, out of the fund deposited by the R. R. Co., with their bill of interpleader.—(See Record, p. 98.) During the progress of the cause, the bond found on page 69 of the Record was taken and filed in the cause, and on the 9th day of July, 1877, the decree, (pp. 117, 118,) was made and entered. The appeal was granted on the 5th day of July, 1879.

BRIEF OF J. H. VISER.

The dismissal of the appeal is claimed by the appellee, J. H. Viser, (whose appearance is entered only for the purpose of this motion):

1st. On the ground that no citation has been served on him.—(See the return, p. 187.)

There is no rule of law that authorizes the service of a citation by leaving a copy with a member of the family of appellee's attorney; and if there was, it appears from this return, that the attempt was made to effect a service on *H. H. Barr*, when the record shows that *H. A. Barr* was the attorney of the appellee.—(See Record, p. 112.)

That the appeal should be dismissed on this ground.—(See Conkling's Treatise, pp. 650, 657; 20 How., 208; 7 Pet., 220; 3 How., 534; 6 How., 81; 5 Wal., 824.)

2d. The appeal bond is fatally defective, because it is given and signed by only two of the appellants, Scruggs and E. R. Matthews; does not state the title of the cause correctly; is made payable to one of the appellees only, when the record shows there are two; and by the omission of the obligatory part, creates no obligation even upon those who have signed it.—(Record, pp. 184, 185.)

3d. W. F. Dowd was a party to the cause, in the court below, but is not made a party to the appeal.—(2 Ab. U. S. Prac., 249, 257.)

4th. This court has no jurisdiction of the appeal, as regards the appellee, J. H. Viser, the decree in his favor being for a sum less than $5,000.—(See Record, pp. 117, 118.) It is true that said appellee claimed of the appellant, Mrs. Scruggs, a larger sum than $5,000; and while he, *as complainant*, (which is the attitude he sustained in the court below,) might have appealed from the decree, the case is different in regard to the defendants. So far as they are concerned, the matter in dispute was *the amount of the recovery fixed by the decree.* An unbroken current of decisions by this court, from the earliest period, renders this position unassailable.—(4 Wal., 163; 7 Cranch, 276; 3 Pet., 33, 469; 2 How., 73; 4 Cranch, 316; 3 Otto, 44; Conk. Treat., 42; Ab. U. S. Prac., 337.)

The only serious question that can be raised, is, whether the decree is to be regarded as joint or several. If it is

joint, then the amount in dispute, both between the R. R. Co., and Mrs. Scruggs, and between Viser and Mrs. Scruggs, would probably be regarded jointly as affecting the jurisdictional amount in the appellate court. But the decrees, (for there are three of them,—one in favor of the R. R. Co. for $179; one in favor of J. H. Viser for $3,807.-27; and one against W. F. Dowd,) are not joint, nor could they be, because there was no mutuality of interest in the claims of the parties, except that they all claimed an interest, but a separate and distinct interest, in the same fund. The claim of appellee, Viser, was adverse to them all, especially to that of the R. R. Co., who by their interference, by injunction, against the remedy he was pursuing in the state court, snatched from his grasp a certain and assured means of obtaining payment of his debt; and thereby placed themselves in an attitude nearly as hostile to his interest as that occupied by Mrs. Scruggs.—(See Record, pp. 72, 75, 76, 84.)

Again, if it be said that the decree is a joint one in favor of the R. R. Co. and Viser, because rendered on the same bond, we answer, if that be true, the amount of both decrees together does not make $5,000. And, it may be stated in general terms, that, so far as the *joint* interest of the appellants is affected by the interest of the appellees, *considered as joint*, the amount in dispute is not equal to $5,000. In other words, if it be asked what is the sum or matter in dispute between appellants, N. Scruggs, E. R. Matthews and James Matthews, jointly, and the appellees, the M. & C. R. R. Co. and J. H. Viser, jointly, the answer is, as shown by the record, $3,986.27. That the matter in dispute between the R. R. Co. and Mrs. Scruggs, separately, is greater than $5,000, does not affect the present inquiry, which concerns alone the position which J. H. Viser holds in this appeal, as a separate and independent party, neither claiming, nor acknowledging, any mutuality of interest with any one connected with the suit, and utterly repudiating such claim on the part of the R. R. Co., or any other person whatsoever.

Had the appellants resided within the jurisdiction of the court, which the record shows they did not, or had they owned property there, so that final process could have been executed, there would unquestionably have been two "fi. fas.,"—one in the name of the R. R. Co., and another separate one in the name of the Company, *for the use and benefit of J. H. Viser*. If this be so, the decree was not joint, but several, and the appellee, Viser, is entitled to the character of a separate and independent appellee in this court; and as the amount in dispute between him and the appellants is less than $5,000, the appeal, as to him, must be dismissed.—(10 Wall., 416; 6 Pet., 172; 3 Otto, 44; 11 How., 522; 6 Pet., 143; 12 How., 352; 8 Pet., 8; 12 How; 347; 16 Pet., 521; 1 Pet., 248; 6 How., 201.)

As to the peculiar form in which the decree in Viser's favor was rendered, that has nothing to do with the present inquiry, which has reference alone to the sum or "matter in dispute," as constituting a jurisdictional basis for an appeal.

If the decree should be regarded as joint, W. F. Dowd was a party to it, and should have been made a party to the appeal. So that, if the decree is regarded as a joint one, the appeal must be dismissed for want of proper parties; and, if several, it must be dismissed, as to Viser, for want of jurisdiction.

But it may be insisted that the order made on the 25th of Dec., 1875, for the payment of Viser's judgment at law against the garnishees, (Record, p. 98,) can be added to the amount of the decree, and that the two together will make a sum exceeding $5,000.

To this the reply is:

1st. That the order for the payment of the judgment at law, though purporting to be made in the chancery suit, properly belongs to the case at law, it being simply an execution of the judgment by an appropriation of funds deposited in the registry of the court by the garnishee to satisfy the judgment, in case one should be obtained. The rec-

ords of the two cases have evidently got mixed, which is not unnatural, as both causes were pending at the same time, before the same judge, sitting as chancellor in the one and as judge in the other. A contrary view amounts to a proposal to review and reverse, at the same time, the judgment at law and the decree in chancery, by one and the same appeal.

2nd. When the defendant is appellant, as in this case, the amount of the plaintiff's or complainant's recovery, as already shown, constitutes the matter in dispute. Now the judgment at law is no part of the recovery in this case, the same having been recovered in the suit at law.

3d. The judgment having been paid by Mrs. Scruggs, or rather by the garnishee, that amount was thereby taken out of the matter in dispute in this suit, which was thus reduced to a sum below $5,000.

Suppose A brings a suit against B for $6,000, and after the suit is brought B confesses that $2,000 of it is due the plaintiff, and accordingly pays it; or, suppose A acknowledges payment of $2,000 and gives credit for the amount; or, which is nearer still to the case before us, suppose suits for the recovery of a debt of $6,000 are pending at the same time, both in a court of law and a court of equity, which is not unfrequently the case, and a recovery is had in the law case for $2,000, for which credit is given in the equity case, and the cause proceeds for the residue of A's claim, and he obtains a decree for $4,000, what is the matter in dispute here, $4,000 or $6,000? Manifestly $4,000; for the $2,000 paid, acknowledged, or recovered, as supposed, was never disputed at all; or if it was, it was no longer in dispute after payment, acknowledgment, or recovery, and credit given for the amount.

In one case, the plaintiff, on a verdict rendered in his favor for more than $5,000, entered a *remittitur*, and this court said it was legitimate, and that the amount for which the judgment was taken constituted the value of the matter in dispute.—(Thompson vs. Butler, 5 Otto, 695.)

4th. If the order for the payment of the judgment is regarded as belonging to this record, we insist that it was an order or decree against the R. R. Co., as garnishee, and not against Mrs. Scruggs, and if she succeeds in her present appeal, she will be remitted to the R. R. Co., for indemnity, and can never reclaim the amount from Viser, until the judgment at law has been set aside or reversed. If this be true, then the order in question cannot be reviewed in this appeal.

5th. The decree or order against Mrs. Scruggs, separately, for the payment of the judgment at law, if regarded as such in this case, cannot be added to the decree against her and the two Matthewses jointly. Otherwise, we have here two appeals—one of Scruggs vs. Viser, and the other of Scruggs, Matthews and Matthews vs. Viser.

6th. If the order to pay the judgment at law belongs to the record in this case, and is to be regarded as an order made in this cause, it was a *final order*, as it entitled the complainant to *immediate execution;* and as this final order was made *three years and a half* before the appeal was taken, it cannot be reviewed by the Supreme Court. —(Forgay vs. Conrad, 6 How., 202; Rev. Stats. U. S., p. 188, § 1,008.)

J. H. VISER.